

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

CHRISTINA M BENNETT

Claimant

MIDWEST BASEMENT SYSTEMS INC

Employer

APPEAL NO. 13A-UI-11833-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/30/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated October 11, 2013, reference 01, that held the claimant was not discharged for misconduct on June 10, 2013 and benefits are allowed. A hearing was held on November 14, 2013. The claimant participated. Bill Heady, VP/Production Manager, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on June 14, 2010 and last worked as a full-time CSR on June 10, 2013. The employer does not have a written attendance policy and an instruction on how an employee is to report an absence from work.

The claimant reported absences to the employer office manager from June 11 through June 14 would be missing work due to her son's illness. Claimant's daycare would not accept her son due to his illness and claimant could make no other arrangement for him.

The employer told claimant on Friday, June 14, she was terminated due to her absenteeism. Although the employer witness said it would not fire her for absences due to her son's illness, it was offered as a consideration. The employer witness disagreed claimant was reporting her absences. The witness also said claimant had worked only one day the previous week and she disputed it. Claimant had received no disciplinary warnings.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on June 14, 2013, for excessive "unexcused" absenteeism.

The employer failed to establish excessive unexcused absenteeism due to no written attendance policy and any disciplinary warning. The employer disputes claimant called in absences but it had no policy as to how they should be reported. Claimant states she called the office manager, and this person was not offered as witness to dispute it.

The employer witness concedes it would not discharge claimant for absences due to her son's illness. It could not offer specific information on any absences the previous week or any time before that period. Absent a disciplinary warning and absenteeism record, job disqualifying misconduct is not established.

DECISION:

The decision of the representative dated October 11, 2013, reference 01, is affirmed. The claimant was not discharged for misconduct in connection with employment on June 10, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css