

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY K THORSBAKKEN
Claimant

APPEAL NO. 12A-UI-14789-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUTHVEN COMMUNITY CARE CENTER INC
Employer

OC: 11/18/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 14, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 1, 2013. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Casi Strube participated in the hearing on behalf of the employer with a witness, Beth Holland. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a certified nursing assistant from April 12, 2012, to November 4, 2012. She was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to discharge at seven absences.

On July 2, 2012, the claimant was issued a written warning for excessive tardiness because she was late five days since May 2012. On September 13, she was issued a second written warning for excessive absences because she had called in absent five times since May 2012. She was issued a three-day suspension on October 18, 2012, because she had three absences in October (and eight absences since June) and ten tardies since May 2012. She was informed that discharge would be recommended on her next offense.

On October 21, the claimant was absent and called in five hours after the start of her shift. She was warned on October 22 that she was on probation for 90 days and any further absences or tardies would result in her termination.

The claimant was ill on November 6 and 7. She called in properly and reported her absences. The employer discharged the claimant on November 7, 2012, for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "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." 871 IAC 24.32(7).

The unemployment insurance rules provide: "While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act." 871 IAC 24.32(8).

The claimant's final conduct was calling in sick on November 6 and 7. The claimant properly called in to report her illness. The administrator testified that she did not know whether the claimant was legitimately ill nor not. While the employer may have been justified in discharging the claimant, the employer has failed to meet its burden of proving the claimant was discharged for a current act of work-connected misconduct.

DECISION:

The unemployment insurance decision dated December 14, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css