

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JILL D JELINEK
Claimant

APPEAL NO. 10A-UI-13770-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABM JANITORIAL SERVICES NORTH
Employer

OC: 08/29/10
Claimant: Respondent (1)

Section 96.5-2 - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's September 27, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Sandy Linsen represented the employer. Tandi Dewater testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 4, 2009. The claimant worked as a full-time lead day porter. Dewater became the claimant's supervisor in early August 2010. The employer's attendance policy informs employees they cannot have more than two unexcused absences in a six-month period and no more than five tardies during this same time frame.

A supervisor, not Dewater, gave claimant written warnings for repeated attendance issues on June 4, and July 29, 2010. Both written warnings indicated that if the claimant had another absence, she would be discharged. The claimant was absent or late when her children were ill. Even though Dewater could not find any doctor's statements in the claimant's file, she gave the employer doctor's statement verifying dates her child was ill. When the claimant received the June 4 and July 29 written warnings, she understood she could not absent or late for work the next 30 days and if she were, the employer would discharge her.

On August 26, after she got up to get ready for work, the claimant discovered her child had a fever and was ill. The claimant could not take her child to daycare. The claimant called friends and relatives to see if anyone could take care of her child that day. The claimant was scheduled to work at 7 a.m. and was unable to find someone to take care of her child until 7 a.m. As soon as the claimant had childcare for her young child, she went to work, but she was 49 minutes late. The claimant called the employer and left a message that she would be late. The claimant did not have Dewater's cell phone number to personally call her.

Since the claimant was again late for work, the employer discharged the claimant on September 2, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

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 employer established the claimant violated the employer's attendance policy for repeated attendance issues. The claimant knew or should have known her job was in jeopardy after she received written warnings on June 4 and July 29. On August 26, the claimant did not plan to report to work late. She did not know her child was ill and unable to go to daycare until she woke up to go to work. Given the fact she was scheduled to work at 7 a.m., it is likely she would have been late for work even if she had made advance arrangements for someone to take care of a sick child. Since the facts indicate the claimant called the employer, even if Dewater did not get the message, and took reasonable steps to get to work as soon as possible after she learned her child was ill, the facts do not establish that the claimant committed work-connected misconduct.

The claimant demonstrated she was not a dependable employee based on her attendance. Therefore, the employer had justifiable business reasons for discharging the claimant. The facts do not, however, establish that the claimant committed work-connected misconduct. As of August 29, 2010, the claimant is qualified to receive benefits

DECISION:

The representative's September 27, 2010 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of August 29, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw