IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

CHERYL L GEORGE
Claimant

APPEAL NO. 07A-UI-03288-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 02/25/07   R: 04
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Cheryl George, filed an appeal from a decision dated March 22, 2007, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 16, 2007. The claimant participated on her own behalf and was represented Bryan Frei. The employer, University of Iowa, participated by Human Resources Specialist Dave Bergeon and Program Assistant Lori Austin. Exhibits One, A, B and C were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Cheryl George was employed by University of Iowa from August 23, 2004 until February 27, 2007, as a full-time lab technician. During the course of her employment she received a number of written warnings and at least three suspensions for attendance problems. The final three-day suspension was issued on February 7, 2007, and the document Ms. George signed indicated further incidents would lead to disciplinary action up to and including discharge. The employer does have the option to impose either a five-day suspension or discharge as the next step. The usual reason for her poor attendance was personal problems.

The claimant was scheduled to work on Saturday, February 17, 2007, from 8:00 a.m. until noon. She notified a nurse at the clinic where she was assigned that day she would be late, and arrived between 8:20 a.m. and 8:25 a.m. However, the policy, of which the claimant was fully aware, was that she should call the main lab and notify the manager on duty. Ms. George elected not to notify the lab manager because it would take too much time.

The employer did not learn of the claimant's later arrival until February 22, 2007, when it received a patient complaint about the lab not being open when he arrived for a scheduled blood draw. Program Assistant Lori Austin questioned the claimant and she admitted she had not arrived at the scheduled time but had put down on her time sheet she worked beginning at

8:00 a.m. She maintained that the employer's policy allows employees to be considered "on time" in inclement weather if they arrive within 30 minutes of their start time. However, the inclement weather provisions are effective only after a person of managerial authority has declared the inclement weather provisions to be in effect.

When the employer inquired further, it learned of the claimant's late arrival, incorrect time on her time sheet, and her failure to notify the lab manager of her late arrival. She was discharged on February 27, 2007, for a final incident of unexcused absence.

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(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
>
> a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

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 claimant had been advised her job was in jeopardy as a result of her poor attendance. In spite of this warning the claimant did not follow the proper procedures for reporting a late arrival by notifying the lab manager, even though she knew that was the person she was to contact.

She also took it upon herself to declare the inclement weather provisions to be in effect and put an inaccurate arrival time on her time sheet. There is no evidence anyone of the proper managerial standing declared these provisions to apply. Her absences were excessive and not properly reported. This is unexcused absenteeism; and under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of March 22, 2007, reference 02, is affirmed. Cheryl George is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw