

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNETTE M BUCHMAN
Claimant

APPEAL NO. 10A-UI-11328-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANKENY HEALTH CARE ENTERPRISES
Employer

OC: 01/08/09
Claimant: Appellant (2)

Section 96.5-2-A – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 6, 2010, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 29, 2010. Claimant participated. Employer participated by Rachel Boardman, Co-director of Nursing. The record consists of the testimony of Rachel Boardman and the testimony of Annette Buchman.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a long-term care facility located in Ankeny, Iowa. The claimant was hired on January 28, 2010, as a certified nursing assistant. Her last day of work was June 30, 2010. She was terminated on July 2, 2010, for excessive absenteeism.

The incident that led to the claimant's termination occurred on July 2, 2010. The claimant called her employer to report a flat tire. The claimant spoke to the on-call nurse. The claimant thought everything had been taken care of and she did not return a call made to her by her supervisor, Rachel Boardman, until 3:00 p.m., which was after her shift ended. Ms. Boardman informed the claimant at that time that she was being terminated. The claimant had been told on June 14, 2010, that if she missed any more work, she would be terminated.

The claimant had had ten absences since the time she started her employment. Two absences were due to a death in the family, which Ms. Boardman said were "understandable." The remaining absences were due to illness. Only one was a no-call/ no-show.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to matters of "personal responsibility", such as transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984) Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7).

The evidence in this case established excessive absenteeism. The majority of the claimant's absences, with the exception of the final absence, are considered excused as the claimant was ill. Personal illness is considered to be an excused absence in unemployment insurance law provided the employee properly notifies the employer. Ms. Boardman testified that only one of the absences prior to July 2, 2010, was a no-call/no-show. Two unexcused absences are not sufficient to show excessive unexcused absenteeism. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated August 6, 2010, reference 02, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css