

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ASHLEY K TURNER**  
Claimant

**APPEAL NO. 15A-UI-07302-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WHIRLPOOL CORPORATION**  
Employer

**OC: 06/07/15**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Whirlpool Corporation (employer) appealed a representative's June 18, 2015, decision (reference 01) that concluded Ashley Turner (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 30, 2015. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Jennifer Wagner, Human Resources Generalist. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 7, 2015, as a full-time assembler. The claimant received the union contract when she was hired. The employer did not issue the claimant any written warnings during her employment. On April 15, 2015, the claimant properly reported her absence due to a sick child. On April 20, 21, 22, and 23, the claimant properly reported her absence due to a medical condition. On April 27, 2015, the employer verbally told the claimant her attendance was unacceptable. On June 3, 2015, the claimant properly reported her absence due to a personal issue. The employer terminated the claimant on June 5, 2015, for having too many absences during her probationary period.

The claimant filed for unemployment insurance benefits with an effective date of June 7, 2015. The employer's representative was present at the fact-finding interview on June 17, 2015, but could not provide any information about the claimant's separation except for the claimant's separation date.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

An employer is entitled to expect its employees to report to work as scheduled. An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant that her behavior could lead to separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

The claimant's absences due to her properly reported medical condition are excused. The employer terminated the claimant for two absences in two months, April 15 and June 3, 2015. Two absences in two months is not excessive. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's June 18, 2015, decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/pjs