

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY A LARSON

Claimant

APPEAL NO: 10A-UI-01010-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND COMMUNICATIONS GROUP

Employer

OC: 12/27/09

Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's January 19, 2010 decision (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. A telephone hearing was held on March 1, 2010. The claimant participated in the hearing. Amanda Holmes, a human resource representative, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on August 6, 2007, as a full-time employee. On June 9, 2009, the claimant agreed to work part time as an advertising sales representative. The claimant had some attendance issues and if she worked four days a week or part time she had more flexibility with her schedule.

As a result of continued absences, the employer gave the claimant a written warning on September 26, 2009. The employer put the claimant on probation for attendance issues. The employer warned the claimant that if she continued to have attendance issues, she would be discharged. The claimant understood her job was in jeopardy because of her absences. The claimant notified the employer she was unable to work on October 21, 22, November 10, 16 and 19. On November 16 or 19 the claimant was on a scheduled absence. These absences occurred either because the claimant was ill or a grandchild was ill and the claimant stayed home to take care of her grandchild.

The claimant is her parent's primary caretaker. The claimant assumed her supervisor would talk to her if her attendance became a problem again. In December when her mother became ill, the claimant thought about asking the employer for FMLA, but she did not talk to the employer about this possibility.

After the claimant received the September 26 written warning, the employer did not give her any additional warnings. On December 8, 9 and 11, the claimant did not report to work. When the claimant worked on December 10, 2009, no one said anything about her absences the two previous days. The claimant did not work these three days either because of weather-related problems after a snow storm or because she took her mother to a doctor's appointment. The week of December 14, the claimant's mother was hospitalized. When the claimant called to report her absence this week, her supervisor told her he understood she needed to take care of her mother.

The employer noticed the claimant's absences started becoming a problem again on December 11. The employer decided to discharge the claimant on December 11 because of her continued absenteeism. The employer was unable to tell the claimant she was discharged until December 21, 2009.

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 claimant's most recent absences, December 8, 9, 11 and the week of December 14, do not indicate the claimant intentionally failed to work as scheduled. The claimant understood her job was in jeopardy. Anytime she was unable to work, she notified the employer. The claimant's supervisor knew she was her parent's primary caretaker. The claimant established justifiable reasons for being absent in December. While the employer established justifiable business reasons for discharging the claimant, the evidence does not establish that the claimant committed work-connected misconduct. As of December 27, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's January 19, 2010 decision (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons that do not constitute work-connected misconduct. As of December 27, 2009, the claimant is qualified to receive benefits, provided

she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css