

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDY ALFF
Claimant

APPEAL NO. 12A-UI-10701-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

OC: 08/05/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer, HCM, filed an appeal from a decision dated August 27, 2012, reference 01. The decision allowed benefits to the claimant, Judy Alff. After due notice was issued, a hearing was held by telephone conference call on October 1, 2012. The claimant participated on her own behalf. The employer participated by Administrator Max Starlin and Dietary Manager Jill Jesson.

ISSUE:

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

FINDINGS OF FACT:

Judy Alff was employed by HCM from March 2, 2000 until July 25, 2012 as a part-time employee. She had been working as a CNA but had just been transferred to the kitchen as a dietary aide. Her last day of work was July 18, 2012, and on that day Dietary Manager Jill Jesson spoke with her in the hallway to ask about her availability for training that weekend. Ms. Alff said she was available.

On Saturday, July 21, 2012, Ms. Alff called in absent but did not call at least four hours before the start of the shift as required. She was no-call/no-show to work on Sunday, July 22, 2012. Her next scheduled day of work was Wednesday, July 25, 2012, and on that day she was discharged by Administrator Max Starlin. The company attendance policy calls for discharge if an employee accumulates ten points and one no-call/no-show is assessed ten points.

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 asserted she did not have a schedule to begin her work in the kitchen and this is apparently true as the only arrangement for her to come in "on the weekend" was a conversation with Ms. Jesson on the claimant's last day as a CNA. There was nothing specific stated as to whether Ms. Alff was to work one day or two for the retraining period.

There is some merit to the claimant's assertion she did not know she was to work on July 22, 2012, because she did not have a schedule. In any event, one day of unexcused absence does not constitute excessive, unexcused absenteeism and disqualification may not be imposed.

DECISION:

The representative's decision of August 27, 2012, reference 01, is affirmed. Judy Alff is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css