

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANTELE L MUNDELL FRY
Claimant

APPEAL NO. 11A-UI-11866-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVENTURE LANDS OF AMERICA INC
Employer

OC: 12/26/10
Claimant: Respondent (1)

Section 96.5-2-a - Discharge
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated August 30, 2011, reference 02, that held the claimant was not discharged for misconduct on August 8, 2011, and which allowed benefits. A telephone hearing was held on October 4, 2011. The claimant did not participate. Ginette De Jesus, housekeeping operations director, participated for the employer. Claimant Exhibits A & B, and Employer Exhibit 1 were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds: The claimant began employment on July 1, 2010, and last worked for the employer as a full-time housekeeper on August 1, 2011. She was absent from work due to a period of illness from August 3 to August 8. She communicated the reason for her absence to her supervisor through a series of text messages on August 5. Her supervisor advised she would need to have a doctor's note when she returned to work. She was let go on August 8 for missing work. The claimant was seen by a doctor on August 8 and she had documentation to prove she was excused from work.

The claimant was not available when called for the hearing.

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(8) provides:

(8) Past acts of misconduct. 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(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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct due to excessive unexcused absenteeism on August 8, 2011.

The employer's witness provided inconsistent testimony that causes it to not be credible regarding claimant's recent period of absenteeism. At first, the witness stated claimant did not contact her about an absence on August 5; but, when confronted with claimant's text messages on that date, she recanted her testimony. At that point, claimant was instructed to bring in a doctor's note when she returned to work. Claimant was let go on August 8, though she did see a doctor and had medical documentation excusing her from work. She was given no opportunity to have her period of absence excused due to illness, which is not disqualifying misconduct.

DECISION:

The department decision dated August 30, 2011, reference 02, is affirmed. The claimant was not discharged for a current act of misconduct on August 8, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw