

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATALIE R SUING
Claimant

APPEAL NO. 08A-UI-04933-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

**OC: 04/20/08 R: 01
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

HCM, Inc. filed an appeal from a representative's decision dated May 15, 2008, reference 01, which held that no disqualification would be imposed regarding Natalie Suing's separation from employment. After due notice was issued, a hearing was held by telephone on June 9, 2008. Ms. Suing participated personally. The employer participated by Greg Anderson, Administrator, and Jennifer Mess, Director of Nurses.

ISSUE:

At issue in this matter is whether Ms. Suing was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Suing was employed by HCM, Inc. from February 27 until April 21, 2008 as a full-time certified nursing assistant. She was discharged because of her attendance.

Ms. Suing was absent March 8 and March 9 because of a vehicle breakdown. She had gone to South Dakota to pick up her boyfriend and had car trouble on the way back. She called the employer on March 8 but did not call on March 9. She was absent due to a sick child on March 20 and because she did not have a sitter on April 6. Ms. Suing was given a written warning about her attendance on April 7, 2008. She was absent April 19 and 20 because she did not have childcare. Her boyfriend, who usually watched the children on the weekends, was in jail. She called on April 19 but did not call on April 20. She could have called on April 20 but did not do so. In addition to the above absences, Ms. Suing was late reporting to work on March 18 and March 27. Attendance was the sole reason for her separation from HCM, Inc.

Ms. Suing filed a claim for job insurance benefits effective April 20, 2008. She has received a total of \$1,135.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes from all of the evidence that the employer initiated Ms. Suing's separation when she was not allowed to continue in the employment. To find a voluntary quit, there must be evidence of an intention to sever the employment relationship accompanied by some overt act of carrying out that intent. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The fact that Ms. Suing was absent without calling in on April 20 is not a basis on which to conclude that she quit. This is especially true given the fact that she returned to work on April 21. For the above reasons, her separation is considered a discharge.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Tardiness in reporting to work is considered a limited absence from work.

Absences caused by matters of purely personal responsibility, such as childcare and transportation, are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Therefore, Ms. Suing's absences of March 8, March 9, April 6, April 19, and April 20 are all unexcused as they were all due to childcare or transportation issues. Furthermore, she did not call the employer to report the absences of March 9 and April 20. In addition to the above unexcused absences, she also had two periods of unexcused absenteeism caused by tardiness on March 18 and March 27.

Ms. Suing was warned about her attendance on April 7. In spite of the warning, she still missed work on April 19 and April 20. She worked for HCM, Inc. for approximately two months. The administrative law judge considers the seven incidents of unexcused absenteeism identified herein to be excessive considering the relatively brief period of employment. Even if the administrative law judge only considered those absences that occurred after the warning, excessive unexcused absenteeism would still be established. Ms. Suing had back-to-back unexcused absences on April 20 and 21, after her April 7 warning. Moreover, she did not even call the employer on April 21 in spite of the fact that she had the means to do so.

Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. For the reasons cited herein, benefits are denied. Ms. Suing has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated May 15, 2008, reference 01, is hereby reversed. Ms. Suing was discharged for misconduct in connection with her employment with HCM, Inc. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to

ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Suing has been overpaid \$1,135.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css