

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE M HYLTON
Claimant

APPEAL NO. 11A-UI-11219-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JENNIE EDMUNDSON
MEMORIAL HOSPITAL
Employer

OC: 07/03/11
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the August 15, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on September 16, 2011. Claimant responded to the hearing notice instructions but was not available when the hearing was called and did not participate. Employer participated through Donna Wellwood and Kathy Heuwinkel.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a teacher from February 2009 and was separated from employment on July 1, 2011 due to “family problems.” On June 23 she called in to report she could not work because her brother was dying and then again on June 24 because he had died. The center director asked her brother’s name so the employer could send flowers but she was unresponsive. The center was slated to close on July 29 so the claimant’s employment was terminated effective July 1 in advance of that closure since she was uncertain about when she could return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

Since the employer discharged claimant because of her uncertainty of when she could be scheduled the employer has not met its burden of proof to establish deliberate job misconduct or a pattern of excessive unexcused absenteeism. Benefits are allowed.

DECISION:

The August 15, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs