

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY J SLIPKE
Claimant

APPEAL NO. 07A-UI-01219-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

G SOFT COMPUTER SERVICES
Employer

**OC: 12/24/06 R: 01
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kimberly Slipke filed an appeal from a representative's decision dated January 26, 2007, reference 01, which denied benefits based on her separation from G Soft Computer Services. After due notice was issued, a hearing was held by telephone on February 19, 2007. Ms. Slipke participated personally. The employer participated by Phil Schilling, Owner.

ISSUE:

At issue in this matter is whether Ms. Slipke 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. Slipke began working for G Soft Computer Services in July of 2004. She was absent from work due to illness from December 20 through December 26. She left a voice mail message for the employer each day to report that she would be absent. She called the employer on December 27 to advise that she was ready to return to work. Ms. Slipke stated to Mr. Schilling, "You probably want me to quit," to which he responded, "that would be a good idea."

Ms. Slipke missed 62 days of work during calendar year 2006. She received a written warning on April 19, 2007, but it did not advise her of the consequence if she continued to have attendance issues. All of Ms. Slipke's absences were due to illness and were properly reported. The employer never made an issue of her failure to contact him on his cell phone rather than leaving messages. The employer also never made an issue of Ms. Slipke's failure to provide doctor's statements to document her absences. Attendance was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes from all of the evidence that Ms. Slipke was discharged from employment. She suggested to the employer on December 27 that he wanted her to quit and he answered in the affirmative. If he did not want her to quit, he could have so stated. The administrative law judge concludes that the employer initiated the separation and, therefore, it 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.

The employer failed to establish that any of Ms. Slipke's absences were unexcused. According to the employer, all of the absences were due to illness and all were properly reported. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. For the above reasons, it is concluded that disqualifying misconduct has not been established. Therefore, benefits are allowed.

DECISION:

The representative's decision dated January 26, 2006, reference 01, is hereby reversed. Ms. Slipke was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw