

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELISHA R LATHROP
Claimant

APPEAL NO: 07A-UI-02432-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA
Employer

OC: 01/21/07 R: 03
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

APAC Customer Services of Iowa LLC (employer) appealed a representative's February 27, 2007 decision (reference 02) that concluded Elisha R. Lathrop (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 30, 2007. The claimant participated in the hearing. Susan Lester, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 24, 2006. The claimant worked as a full-time customer service representative. At the time of hire, the claimant received information about the employer's attendance policy and progressive discipline an employee receives when an attendance problem develops.

During the claimant's employment, she was absent a number of times for medical appointments she had that were associated with her pregnancy. The claimant understood from her supervisor that as long as she provided a doctor's statement for her absences, her job was not in jeopardy.

The employer's records indicate the claimant received a final written warning for attendance problems on January 10, 2007. The claimant does not recall receiving any final written warning in January 2007. The claimant did not realize her job was in jeopardy.

On January 18, the claimant left work early because she was ill. The claimant went to her doctor and obtained a doctor's note for this absence. The claimant called the employer on

January 19 to report she was still ill and unable to work. The claimant went to the emergency room on January 19 and obtained a doctor's statement verifying she was ill and unable to work.

On January 22, 2007 the claimant learned her babysitter had a last-minute emergency situation and was unable to care for the claimant's child. The claimant was about an hour late for work on January 22 because she had to find another childcare provider. The claimant notified the employer that she would be late for work.

After the claimant arrived at work on January 22, 2007, she gave her supervisor the doctor's statements for January 18 and 19. The claimant then learned that someone in management made the decision to discharge her because of her continuing absenteeism and it did not make any difference if she had gone to her doctor on January 18 and 19. The employer discharged the claimant on January 22, 2007, for being excessively absent from work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer discharged the claimant for business reasons. Even though the claimant had numerous absences, she did not intentionally disregard the employer's interest. Anytime the claimant was unable to work, she notified the employer. The claimant's recent absences occurred because at the last minute she was ill and unable to work. The claimant was late for work on January 22 because her childcare provider had an emergency and could not care for the claimant's child. Instead of taking all day off from work, the claimant made reasonable efforts to have another childcare provider take care of her child. As a result of the claimant's quick action, the claimant was only an hour late for work. The facts do not establish that the claimant intentionally failed to work as scheduled. Instead, her absences and current tardy occurred for reasons beyond her control or because she was ill and unable to work. As of January 21, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 27, 2007 decision (reference 02) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected

misconduct. As of January 21, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs