

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA M GOTZINGER
Claimant

APPEAL NO. 09A-UI-11743-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

**Original Claim: 06/21/09
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated August 3, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 31, 2009. The claimant participated. The employer participated by Carey Schilling, front office coordinator. The record consists of the testimony of Angela Gotzinger and the testimony of Carey Schilling.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a staffing agency. The claimant was hired on August 15, 2008, as a first-shift production worker for Eagle Window and Door. The claimant was terminated on December 18, 2008. The reason for her termination was violation of the attendance policy at Eagle Window and Door. The claimant had left early on October, 16, 2008; October 27, 2008; and October 31, 2008. She was absent from work on December 16, 2008; December 17, 2008; and December 18, 2008. The reason for her absence was that she was sick. She reported her absence to her supervisor at Eagle Window and Door and to her team leader.

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Excessive unexcused absenteeism is one form of misconduct. However, the absences must be both unexcused and excessive. Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer.

The evidence in this case established that the claimant was absent due to illness just prior to her termination. She properly notified the employer about her absence. Since the claimant's absence was excusable, misconduct has not been shown. The claimant is entitled to benefits if she is otherwise eligible.

DECISION:

The representative's decision dated August 3, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw