

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BERNADINE T NOVOA
Claimant

APPEAL NO. 11A-UI-07908-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON STAFFING COMPANY
Employer

OC: 07/19/09
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Bernadine Novoa filed an appeal from a representative's decision dated June 9, 2011, reference 03, which denied benefits based on her separation from Jacobson Staffing Company (Jacobson). After due notice was issued, a hearing was held by telephone at 3:00 p.m. on July 13, 2011. The employer participated by Ruth Caster, assistant manager.

Ms. Novoa did not respond to the notice of hearing prior to the hearing. She contacted the Appeals Bureau at approximately 3:14 p.m. on the day of the hearing. She could not produce a control number to verify that she had called prior to the hearing. Inasmuch as she failed to establish good cause for not participating in the hearing, the administrative law judge declined to reopen the hearing record.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Novoa began working for Jacobson on February 7, 2011. She was assigned to work full-time as a machine operator and packager for Lee Container. She was released from the assignment on February 21 because of her attendance.

Ms. Novoa properly reported the intent to be absent due to illness February 13 through 17. She returned to work on February 18 with a doctor's note indicating she had been seen on February 15 and could return to work on February 18. She left work early, with permission, on February 18 because she was ill. Her next scheduled day was February 21. On that date, a friend called to report that Ms. Novoa would be absent due to illness. Jacobson called her that day to advise that she was not to return to the assignment with Lee Container.

REASONING AND CONCLUSIONS OF LAW:

Ms. Novoa was discharged from her assignment on February 21, 2011. 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 benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused.

All of Ms. Novoa's absences were properly reported to the employer. They were all reported to be due to illness. Some of the dates were covered by a doctor's excuse. There was no evidence that she was not, in fact, ill on the dates indicated. Without evidence to the contrary, the administrative law judge must conclude that all of her absences were excused absences. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. While there may have been good cause to discharge Ms. Novoa, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated June 9, 2011, reference 03, is hereby reversed. Ms. Novoa was discharged by Jacobson, but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw