

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE K WOODARD

Claimant

FIVE STAR QUALITY CARE INC

Employer

APPEAL NO: 10A-UI-10920-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/06/10

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated July 29, 2010, reference 01, that held the claimant was not discharged for misconduct on April 30, 2010, and benefits are allowed. A telephone hearing was held on November 9, 2010. The claimant participated. Darlene Brown, HR Assistant, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on June 13, 2006, and last worked for the employer as a full-time direct support professional at Park Place on April 30, 2010. The claimant received the employer policy that she is subject to progressive discipline for attendance issues. The employer does not consider the reason for missing work when it issues discipline.

The employer issued verbal and written warnings to the claimant for missing work. The claimant was issued a final warning for attendance on April 23, 2010, for calling in an absence due to an allergic reaction the day before. The claimant was discharged on April 30 for calling in absences due to illness (high fever) on April 28/29.

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(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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct in connection with employment on April 30, 2010.

The claimant missed work for properly reported illness on April 22, 28 & 29 that is not misconduct, as the absences are for excusable reasons. Since these are the most recent absences the employer relies upon for discharge, there is no current act of misconduct.

DECISION:

The department decision dated July 29, 2010, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct on April 30, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs