

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RENA LEWIS
Claimant

APPEAL NO: 13A-UI-11124-ST

ALLEN MEMORIAL HOSPITAL
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/25/13
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 25, 2013, reference 02, that held she was discharged for excessive unexcused absenteeism on August 21, 2013, and benefits are denied. A telephone hearing was held on November 12, 2013. The claimant participated. Shelly Arntson, Occupational Nurse, Steve Sesterhenn, VP/HR, and Toni Tilkes, Medical Operations Manager, participated for the employer.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on April 15, 2013, and last worked for the employer as a full-time RN on August 9, 2013. The employer has a contract with John Deere to provide onsite services. The employer assigned claimant to work at a John Deere Occupational Clinic.

Claimant received the employer attendance policy. Once a work schedule is posted, an employer is required to find a replacement. The employer does use progressive discipline to warn an employee.

Claimant requested vacation days for August 14 and 15. The employer approved the request. The employer posted the August work schedule. Claimant traveled to Mississippi knowing she was scheduled to work August 11, 12 and 13. When she had a transportation problem, she asked her supervisor to be off work for those days. The employer denied the request due to the posted schedule but she could seek a replacement. She was unable to do so.

Due to the absences, the employer HR representative did communicate to claimant it would re-assign her job. A meeting was scheduled for August 20 at 3:30 p.m. and claimant agreed. Claimant called stating she would not make the meeting due to continuing transportation issues.

When she came in the next day she was terminated for excessive unexcused absences that included her missing the scheduled meeting.

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.

The administrative law judge concludes employer established claimant was discharged for misconduct on August 21, 2013 for excessive unexcused absenteeism.

Missing work due to transportation issues is not excusable. Claimant missed three days of scheduled work and a separate day for a scheduled meeting. The consecutive period of absence with claimant's continuing absence did not allow the employer to implement discipline.

While no person can anticipate a transportation problem claimant's absences are excessive and not for excusable reasons. It is curious claimant had permission to be off August 14 and 15 for vacation and yet she traveled to Mississippi that led to her absences for the three days leading to the approved absence period. Job disqualifying misconduct is established.

DECISION:

The department decision dated September 25, 2013, reference 02, is affirmed. The claimant was discharged for misconduct on August 21, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs