

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELE R SCHON
Claimant

APPEAL NO. 07A-UI-07877-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALORICA INC
Employer

**OC: 07/08/07 R: 01
Claimant: Appellant (2-R)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Michele Schon, filed an appeal from a decision dated August 9, 2007, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 4, 2007. The claimant participated on her own behalf. The employer, Alorica, Inc., participated by Human Resources Generalist Jodi Heinman and Team Manager Stephanie James.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Michelle Schon was employed by Alorica from April 9 until July 10, 2007, as a full-time customer service agent. During the course of her employment she received two verbal and one written warning regarding her attendance. The final warning was given June 28, 2007, and she was absent the next day due to illness. She worked July 3 and 4, 2007, called in sick July 5 and 6 and 10, 2007, at which time she was discharged.

The claimant suffers from chronic illness related to emphysema and the medication she takes for it. Ms. Schon's base period wages were earned in full-time work but she does not appear to be able to work full time at this point due to her chronic illness.

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.

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.

The claimant was discharged due to excessive absenteeism. However, the absences were due to illness and were properly reported. A properly reported illness cannot be considered misconduct as it is not volitional. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

The issue of whether the claimant is able and available for full-time work, given her medical condition, has not been adjudicated and should be remanded.

DECISION:

The representative's decision of August 9, 2007, reference 01, is reversed. Michelle Schon is qualified for benefits, provided she is otherwise eligible.

The issue of whether the claimant is able and available for work given her testimony she is still under a doctor's care and cannot work full-time hours is remanded to the Claims Section for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css