

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AVA APPEL**  
Claimant

**APPEAL NO: 07A-UI-04564-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE HEALTH CLUB INC  
FOUR SEASONS HEALTH CLUB**  
Employer

**OC: 04/15/07 R: 01  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The Health Club, Inc./Four Seasons Health Club (employer) appealed a representative's May 2, 2007 decision (reference 01) that concluded Ava Appel (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 22, 2007. The claimant participated in the hearing. Tiffany Greinke appeared on the employer's behalf and presented testimony from one other witness, Nina Jarrett. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on November 1, 2006. She worked part time (25 to 30 hours per week) as a café worker. Her last day of work was April 4, 2007. The employer effectively discharged her on April 9, 2007. The reason asserted for the discharge was excessive absenteeism.

The claimant usually worked shifts beginning at 9:00 a.m. or 10:00 a.m. and ending at 3:00 p.m. or 4:00 p.m. The claimant had been scheduled to work 10:00 a.m. to 3:00 p.m. on April 5, but when the claimant had not arrived by 10:00 a.m., Ms. Jarrett, the claimant's supervisor, called the claimant's home. The claimant had initially left for work, but had become ill and had returned home shortly before 10:00 a.m., feeling light-headed. She was concerned that she might pass out and that it was related to a heart attack she had learned in March that she had previously unknowingly suffered. The claimant's boyfriend took the call from Ms. Jarrett and indicated the claimant was home sick and was potentially passing out. Ms. Jarrett responded that the claimant would need to get a release from her doctor before she could return to work. She later confirmed this when the claimant called her at home.

The claimant was scheduled to work on April 6 but did not report to work as she had not yet obtained a doctor's excuse and understood she could not return until she had obtained a doctor's release. She was scheduled to see her doctor later on April 6. On April 9 the claimant called Ms. Jarrett and was informed that her position had been filled. The employer questioned the legitimacy of the claimant's assertion that she had truly been ill or that she needed to be seen at a particular medical facility, but presented no direct evidence to confirm its suspicion she was not truly ill or to counter the claimant's testimony that as a native American she did need to obtain her medical treatment through a particular medical facility.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

Iowa Code § 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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.

Absenteeism can constitute misconduct, however, to be misconduct, absences must be both excessive and unexcused. A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Cosper, supra. The claimant reasonably concluded that she was not to report to work on April 6 or thereafter until she had a doctor's release, her absences after April 5 are excused even if she was not feeling ill after April 5; she acted with reasonable promptness to seek to obtain the specified doctor's release. Because the final absences were related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. The employer has failed to meet its burden to establish misconduct. Cosper, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's May 2, 2007 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs