

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASMINE E WATSON
Claimant

APPEAL NO. 12A-UI-04942-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARMLEITE SISTERS FOR THE AGED
Employer

OC: 04/01/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated April 20, 2012, reference 01, which held the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 21, 2012. The claimant participated. The employer participated by Laura Williams, human resources director. The record consists of the testimony of Laura Williams; the testimony of Jasmine Watson; and Claimant's Exhibits A through D.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a long-term care facility known as the Kahl Home. The claimant was hired on August 22, 2011, and worked as a part-time certified nursing assistant. The claimant's last day of work was February 23, 2012. She was terminated on February 25, 2012, for excessive absenteeism.

The incident that led to the claimant's termination occurred on February 24, 2012. The claimant called off due to the fact that her car would not start. The employer offered to send someone to pick her up and the claimant refused. This call-off put the claimant at 16.333 events, which is termination under the employer's written attendance policy. The claimant was aware of this policy.

The claimant had the following attendance record:

February 21, 2012	Late
February 19, 2012	Family Member Sick
January 30, 2012	Family Member Sick

January 27, 2012	Family Member Sick
January 22, 2012	Family Member Sick
January 20, 2012	Self Sick
January 13, 2012	Family Member Sick
January 1, 2012	No Call/No Show
November 25, 2011	Self Sick
November 5, 2011	Late
November 2, 2011	Late
October 8, 2011	Late
October 2, 2011	Self Sick
September 30, 2011	Self Sick
September 11, 2011	No-Call/No-Show

The claimant was warned about her attendance in January 2012 and February 2012.

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(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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such as transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). The employer has the burden of proof to establish misconduct.

The claimant's attendance record shows 16 absences from the period of September 11, 2011, through February 24, 2012. Some of these absences would be considered excused absences under Iowa law, notably the claimant's personal illness. The majority of her absences were not excused absences. The claimant had been kept up to date on her events and knew in February 2012 that she was close to reaching her 16 events. The claimant's testimony that her points were wrong or that she never signed anything with respect to her points in February 2012 is not credible. She was also counseled in January 2012 about her points. The claimant felt she was unduly penalized because her child was in the hospital, but the employer assessed only one point for that entire period. The administrative law judge concludes that the claimant was discharged for excessive unexcused absenteeism. This is misconduct. Benefits are denied.

DECISION:

The representative's decision dated April 20, 2012, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw