

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA M FREEMAN**  
Claimant

**APPEAL NO. 13A-UI-00985-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**K MART CORP**  
Employer

**OC: 12/16/12  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

K Mart Corporation filed a timely appeal from a representative's decision dated January 17, 2013, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on April 9, 2013. Claimant participated. Participating as a witness for the claimant was Mr. Richard Hunt, the claimant's fiancé. The employer participated by Ms. Sheila Brown, Human Resource Lead. Employer's Exhibits One through Six were received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Amanda Freeman was employed by K Mart Corporation from June 1, 2011 until December 14, 2011 when she was discharged for being excessively absent. Ms. Freeman was employed as a part-time cashier working 15 to 28 hours per week and was paid by the hour. Her immediate supervisor was Sara Stick.

Ms. Freeman last reported for scheduled work on December 11, 2011. The claimant did not report for scheduled work after that date because she had been hospitalized on or about December 12, 2011 due to a serious medical condition related to her pregnancy. Ms. Freeman informed her employer of being transported by ambulance and her inability to work due to medical reasons and reported her impending absence for her next scheduled work shift. Subsequently, the claimant or her fiancé notified the employer each day that the claimant continued to be hospitalized and not able to work.

Subsequently, Ms. Freeman contacted Kelly, a manager, and was informed at that time that she had been "let go."

It is the employer's belief that the claimant "quit her job" when she could not work her scheduled hours following December 11, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

The first question before the administrative law judge is whether the evidence in the record establishes that the claimant quit employment or was discharged by the employer. The administrative law judge concludes based upon the totality of the evidence in the record that Ms. Freeman did not quit her job or intend to relinquish her position with the company but that the claimant was discharged based upon poor attendance and her failure to report for scheduled work after December 11, 2011. The question then becomes whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter, Ms. Freeman did not report for scheduled work after December 11, 2011 because she was seriously ill and unable to report to work because of her illness. The evidence in the record establishes that Ms. Freeman or her fiancé called in each day after December 11, 2011 to report the claimant's impending absence and the reason for it. Although the claimant could not report to work and had been calling in, she nonetheless was informed by a management individual that she was being "let go." The claimant had previously received warnings for poor attendance and had not been reporting for work after December 11, 2011.

The question before the administrative law judge is not whether the employer can discharge an employee for this reason but whether the discharge is disqualifying under the provision of the Employment Security Law. While the decision to terminate Ms. Freeman may have been a sound decision from a management viewpoint, the claimant's most recent absences were due to illness and were properly reported. Under those circumstances, the claimant did not engage in misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated January 17, 2013, reference 02, is affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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