

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOAN R FOSTER
Claimant

APPEAL NO. 10A-UI-03265-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

**OC: 01/24/10
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Joan Foster, filed an appeal from a decision dated February 22, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 14, 2010. The claimant participated on her own behalf. The employer, Mosaic, notified the Appeals Section in writing prior to the hearing that it would not participate.

ISSUE:

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

FINDINGS OF FACT:

Joan Foster was employed by Mosaic from December 11, 2007 until December 30, 2009 as a full-time direct care specialist working 2:00 p.m. until 10:00 p.m. She received a copy of the employee handbook which sets out the attendance policy and progressive discipline. Attendance is tracked by points and an employee will receive a verbal warning after accumulating four points, and a written warning at six points. A second and final written warning is given at eight points and discharge will occur at nine points,

Ms. Foster received a verbal warning on March 5, 2009, and a written warning June 25, 2009. On October 23, 2009, she received the second and final written warning which notified her that her job was in jeopardy if she accumulated nine points.

The claimant called in sick on December 28, 2009, but was not able to talk to her supervisor or manager as neither of them were present. She left a message with a co-worker. On December 29, 2009, she went to the doctor and encountered her supervisor, Rita Gocanour, at the pharmacy around 9:45 a.m. as she was dropping off a prescription. She had just come from the doctor's office and had been excused from work until December 31, 2009. She notified Ms. Gocanour she would be absent that day.

On December 30, 2009, the employer asked the claimant to come in to the facility and when she did, she was discharged for absenteeism.

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 for excessive absenteeism. Before disqualification may be imposed, there must be a current, final act of misconduct. See 871 IAC 24(32). A properly reported illness cannot be considered misconduct as it is not volitional. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The evidence establishes the claimant properly reported her absences on both days at least two hours prior to the start of her shift as required. There was no current, final act of misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of February 22, 2010, reference 01, is reversed. Joan Foster is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs