

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EVA M VELASCO
Claimant

APPEAL NO. 10A-UI-04368-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CURLY'S FOODS
Employer

OC: 02/21/10
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Curly's Foods filed an appeal from a representative's decision dated March 15, 2010, reference 01, which held that no disqualification would be imposed regarding Eva Velasco's separation from employment. After due notice was issued, a hearing was held by telephone on May 4, 2010. Ms. Velasco participated personally. The employer participated by Kathy Peterson, Human Resources Manager, and Sandra Reynosa, Production Supervisor. Exhibits One through Eight were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Velasco was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Velasco began working for Curly's Foods on February 2, 2008. She was employed full time as a laborer. She was discharged because of her attendance. An individual is subject to discharge if she accumulates 12 attendance points within a 12-month period.

Ms. Velasco was absent because she did not have child care on July 14, 2009. She was absent on August 21 because she was picking up her father at the airport in Omaha and on December 9 because her car was stuck in the snow. All of her other absences were due to the illness of either her son or her daughter. All of her absences were properly reported. She never left work early without permission. The decision to discharge was based on the absence of February 21, 2010.

Ms. Velasco was scheduled to be at work at 6:30 am. on Sunday, February 21. Her child had been sick all weekend, requiring a hospital visit on Friday evening. As a result of the illness, Ms. Velasco did not get much sleep and, therefore, overslept and failed to report for work. Because she overslept, she did not notify the employer that she would be absent. The absence

resulted in her discharge on February 22, 2010. Attendance was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused.

The evidence establishes three unexcused absences, July 14, and August 21, 2009 and February 21, 2010. The absences of July 21 and August 21 are unexcused because they were for personal reasons. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The absence of February 21 is unexcused because it was not properly reported. In order to support a disqualification from job insurance benefits, the evidence must establish that the discharge was prompted by a current act of unexcused absenteeism. 871 IAC 24.32(8). Although the final absence in this case was unexcused, there were extenuating circumstances.

Ms. Velasco did not have a history of not properly reporting her absences. The absence of February 21 was not properly reported because she overslept as a result of being up most of the weekend with a sick child. For this reason, it is not considered an act of deliberate or intentional misconduct. Inasmuch as the discharge was not triggered by a current act of misconduct, no disqualification is imposed.

DECISION:

The representative's decision dated March 15, 2010, reference 01, is hereby affirmed. Ms. Velasco was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs