

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMY A PITTMAN**  
Claimant

**APPEAL NO. 14A-UI-00026-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARKETLINK INC**  
Employer

**OC: 04/21/13  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated December 26, 2013, reference 08, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 23, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Kim Berg-Olsen participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a telephone sales representative for the employer from September 4 to December 4, 2013. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to discharge if they had over six occurrences in the first 30 days of employment.

The claimant received a formal warning for having 5.5 occurrences on December 2, 2013, after she was late on October 3 (.5 occurrence), late due to a sick child on October 14 (.5 occurrence), absent due to a sick child on October 15 (1 occurrence), absent because she was sick on October 23 (1 occurrence), absent due to a sick child on October 31 (1 occurrence), late on November 24 (.5 occurrence), and absent due to a sick child on December 1 (1 occurrence). She properly notified the employer when she missed work.

The claimant's 18-month-old child was sick with the flu on December 1 and would not be accepted at daycare. She got her mother to babysit on December 2 but she knew her mother had to work on December 3. She talked to her supervisor on the afternoon of December 2 and told him that if her child was still sick, she would have to stay home on December 3. The claimant called in properly on December 3 and reported that she was not able to work due to her child's illness.

The employer discharged the claimant on December 4 because she had 6.5 occurrences.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "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." 871 IAC 24.32(7).

No willful and substantial misconduct has been proven in this case. While the employer may have been justified in discharging the claimant under its rules, work-connected misconduct as defined by the unemployment insurance law has not been established. The claimant's final absences were for legitimate family medical issues and were properly reported.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

**DECISION:**

The unemployment insurance decision dated December 26, 2013, reference 08, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css