

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NEIJOHN K KAISHA
Claimant

APPEAL NO. 13A-UI-00129-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 11/25/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 27, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 5, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Tracy Taylor participated in the hearing on behalf of the employer with a witness, Lisa Blockhus.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a dietary aide for the employer from November 10, 2011, to November 15, 2012. She 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 termination if they received 10 attendance occurrences. Attendance occurrences were assessed for unscheduled absence or tardiness.

As of October 8, 2012, the claimant had 9.5 occurrences and received a final warning that she would be terminated for another attendance occurrence. Other than one occurrence when the claimant was out of town, her occurrences were for legitimate illness and were properly reported.

On November 17, prior to her work shift that day, the claimant brought in an excuse from her dentist stating that she had two teeth extracted and was unable to work that day.

The absence on November 17 put the claimant at 10.5 occurrences, and as a result, the employer discharged her.

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).

871 IAC 24.32(7) provides:

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.

While the employer may have been justified in discharging the claimant under its policy, work-connected misconduct as defined by the unemployment insurance law has not been established. Nearly all of the claimant's absences, including the final one, were due to legitimate medical reasons and were properly reported.

DECISION:

The unemployment insurance decision dated December 27, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css