

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAIME D MCDANIEL
Claimant

APPEAL NO. 11A-UI-12768-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CALERIS INC
Employer

**OC: 08/28/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated September 19, 2011, reference 01, that held the claimant was discharged for excessive unexcused absenteeism on August 24, 2011, and benefits are denied. A hearing was held on October 19, 2011. The claimant participated. Bobbie Barry, Director, and Stacy Springer, Vice President, participated for the employer. Claimant Exhibit A and Employer Exhibit 1 were received as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant worked as a full-time TSR from August 10, 2010 to August 29, 2011. The claimant received the employer attendance policy that provides for progressive discipline.

The claimant received progressive discipline for attendance issues up to a final warning on June 17, 2011. The warning advised claimant her job was in jeopardy and if she misses work again, she would be terminated. On August 26, the claimant reported an absence due to illness. She was seen by a doctor (Manning Regional Healthcare Center) on that date and given an excuse from work. The employer discharged claimant on August 29 for excessive unexcused absenteeism in violation of its attendance policy.

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 administrative law judge concludes that the employer failed to establish a current act of misconduct in the discharge of the claimant on August 29, 2011, for excessive "unexcused" absenteeism.

The employer placed claimant on a final warning on June 17, 2011 stating her job was in jeopardy, and if she misses work again, she would be terminated. The employer is relying upon claimant properly reporting an absence from work on August 26 for which she had a doctor's excuse.

The absence is for an excusable reason and does not constitute a current act of misconduct. Although there is an issue whether claimant presented the excuse to the employer at the time of discharge, the over-riding consideration is that she was excused from work. The significance of the employer establishing misconduct of the August 26 absence is that it had been more than two months since the final warning, and it is the moving cause for discharge.

DECISION:

The decision of the representative dated September 19, 2011, reference 01, is reversed. The claimant was not discharged for a current act of misconduct in connection with employment on August 29, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css