

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMY D MUHL**  
Claimant

**APPEAL NO. 08A-UI-03080-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FLYING J INC**  
Employer

**OC: 02/24/08 R: 04  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated March 19, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 14, 2008. The claimant participated. The employer participated by Mr. Leslie Greenwood, Kitchen Manager.

**ISSUE:**

At issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from October 13, 2005 until February 27, 2008 when she was discharged for excessive absenteeism. Ms. Muhl was employed as a full-time buffet runner working 7:00 a.m. until 3:00 p.m. and was paid by the hour.

The claimant was discharged when she was absent most recently on February 25, 2008. The claimant had been ill and had requested to leave work early because of her illness. Ms. Muhl visited a medical doctor who confirmed that she was unable to work due to illness. The claimant presented a doctor's note verifying the reason for her non attendance.

Prior to her discharge Ms. Muhl had received three written warnings for attendance violations. The claimant had been absent at times, due to the illness of herself and her child. Ms. Muhl provided notice to the employer of impending absences. A decision was made to terminate Ms. Muhl when her number of absences began to affect staffing and productivity.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant was discharged for intentional disqualifying misconduct in connection with her work. It does not. The evidence in the record establishes that Ms. Muhl had been absent on a number of occasions due to the illness of herself and her child and had always provided notification to the employer of impending absences. The claimant's most recent absence occurred when she was too ill to work and provided proper notification to the employer of her impending absence and the reason for it. The claimant also provided a doctor's note verifying that she was too ill to work. The claimant was discharged based upon the repetitive nature of her absences and its effect on company business. Prior to discharging the claimant the employer had warned Ms. Muhl on three separate occasions.

The Iowa Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct. The court also held that absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. In this case the evidence clearly establishes that Ms. Muhl was absent due to illness and had properly reported her pending absence to the employer.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for this reason but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate Ms. Muhl may have been a sound decision from a management viewpoint, for the above-stated reasons, intentional disqualifying misconduct at the time of separation has not been shown.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant was discharged under non disqualifying conditions. Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated March 19, 2008, reference 01, is hereby affirmed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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