

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ASHLEY M KING**  
Claimant

**APPEAL NO. 11A-UI-08345-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRO RESOURCES INC**  
Employer

**OC: 05/29/11**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated June 21, 2011, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on July 19, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Ashley Greene participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. She worked on a full-time assignment as a press operator at Ashley Industrial Molding from October 29, 2010, to May 29, 2011. 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 discharge after receiving nine attendance points for unscheduled absence and tardiness. When the claimant was hired, she was hired to work on the third shift from 9:30 p.m. to 6:00 a.m. This schedule worked with the claimant's school schedule during the day.

The claimant received a verbal warning for excessive absenteeism on February 17, 2011, after she was absent from work on February 12. She had called in to report that she was going to be late, but failed to report to work. She received a written warning on April 4 because she had four attendance points due to missing work for medical reasons.

The claimant sustained an injury at work and was assigned to perform light-duty work on the third shift. At some point in May 2011, she was given new medication for her condition. She was off work due to the side effects of the medication. The claimant returned to work during the week of May 16. Before returning to work, she was told that she was required to move to the first shift because workers on the third shift had complained that she was not performing any

work and the employer believed it could accommodate her work restriction better on the first shift. The first-shift hours were from 7:30 a.m. to 3:30 p.m.

The claimant told her supervisor that first shift would be a hardship because she had classes during the day on Monday, Wednesdays, and Friday, she had a child with health problems that required doctor's visits, and she would need time to find childcare for her children. The supervisor said the employer would work with the claimant.

The claimant worked the first shift on Tuesday, May 17. The claimant was absent from work on May 18 due to illness or a doctor's appointment. She properly called the employer. She was given one attendance point for this. On May 19 the claimant left work early and was given a half point. When the claimant worked third shift, she had Friday off. She missed work on Friday, May 20 because of miscommunication about the work schedule as she did not know she was scheduled. She received one point for this.

The claimant had told her supervisor that she could not afford to miss any more class. She missed work on May 23 and 25 due to her schooling with proper notice to the employer. She received one point for each day. The claimant did not have childcare on May 24 and 26 and missed work for that reason because she had been given short notice of the change in her schedule. She received one point for each day.

With her absence on May 26, the claimant was at 9.5 points and was terminated based on the employer's attendance policy.

#### **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.

I concluded that the claimant's final absences were for based on reasonable grounds. She was forced to work a different shift than she was hired for. She explained that the schedule conflicted with her school and created problems with childcare. She was told that the employer would work with her, but she was given points for the days she missed to attend class or due to childcare problems. She properly notified the employer about the absence. No willful and substantial misconduct has been proven in this case.

**DECISION:**

The unemployment insurance decision dated June 21, 2011, reference 01, is reversed. 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/pjs