

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER E HICKS
Claimant

APPEAL NO. 08A-UI-00934-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTH ENGLISH FOODS INC
Employer

**OC: 01/06/08 R: 03
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

North English Foods, Inc. filed an appeal from a representative's decision dated January 24, 2008, reference 01, which held that no disqualification would be imposed regarding Heather Hicks' separation from employment. After due notice was issued, a hearing was held by telephone on February 12, 2008. Ms. Hicks participated personally. The employer participated by Neil Peska, Store Manager, and Amy Hada, Deli Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Hicks was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Hicks was employed by North English Foods, Inc. from June of 2007 until January 3, 2008. She worked full time as a deli cashier. She was discharged because of her attendance and because her boyfriend made a scene at the workplace. The employer did not provide evidence of absences prior to December 31, 2007.

Ms. Hicks was verbally warned about her attendance on December 1, 2007. She called on December 31 to report that she would be absent due to illness. She called ten minutes before the start of her shift on January 1 to report that she would be absent and was advised that she would need a doctor's excuse. She advised her manager that she would get the "damn" excuse. Approximately one hour after she spoke to the employer, Ms. Hicks' boyfriend went to the store.

Ms. Hicks knew her boyfriend was going to the store but believed his visit was to get items needed at home. While he was at the store, he was loud and threatening toward the manager and using profanity. As a result of his conduct, the employer made the decision to discharge Ms. Hicks. January 2 was her day off and she returned to work on January 3 with a doctor's

excuse covering her absences of December 31 and January 1. She was notified of her discharge on January 3.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Ms. Hicks' absence of December 31 is excused as it was due to illness and was timely reported. Although her absence of January 1 was due to illness, she only gave ten minute's notice of the intent to be absent. However, the employer did not notify her at that time that she was being discharged.

The employer's decision to discharge Ms. Hicks was made only after her boyfriend came to the workplace and acted in a threatening manner towards the manager. Having an individual in the store yelling profanities and threatening employees is certainly contrary to an employer's best interests. However, there is no basis on which to attribute the conduct of her boyfriend to Ms. Hicks. She had no knowledge that he would act in such a manner towards her employer. There was no evidence that she sent him to the store to intimidate her manager. She was not at the store with him encouraging him in his conduct. In short, any misconduct committed by Ms. Hicks' boyfriend is not attributable to her.

The employer failed to establish that Ms. Hicks was excessively absent on an unexcused basis. The employer presented no records of her attendance prior to December 31, 2007. Moreover, she was not told that her continued employment was in jeopardy because of her attendance. For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has not been established. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). Benefits are allowed.

DECISION:

The representative's decision dated January 24, 2008, reference 01, is hereby affirmed. Ms. Hicks was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs