

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLENE A BURNS
Claimant

APPEAL NO. 08A-UI-03836-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARSHALLTOWN YMCA
Employer

**OC: 03/16/08 R: 02
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Charlene Burns filed an appeal from a representative's decision dated April 8, 2008, reference 01, which denied benefits based on her separation from Marshalltown YMCA. After due notice was issued, a hearing was held by telephone on May 5, 2008. Ms. Burns participated personally and offered additional testimony from Glenn Patterson. The employer participated by Gary Ross, Property Manager.

ISSUE:

At issue in this matter is whether Ms. Burns 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. Burns began working for the YMCA on April 12, 2000. She was employed full time in housekeeping. She was discharged solely because of her absences beginning February 25, 2008.

Ms. Burns was absent due to illness on February 25, 26, and 27 but did not call the employer to report the intended absences. She did not have a home telephone or a cell phone. She usually rode to work with another employee, who also worked in housekeeping. When her ride came by on February 25, 26, and 27, Ms. Burns notified her that she was not going to work due to illness. When a friend called the employer to get Ms. Burns' check on February 28, he was told she had to turn in her keys. The employer did not recall whether Ms. Burns' ride left any messages for Gary Ross concerning the absences beginning February 25.

Ms. Burns had been absent on other occasions without calling in prior to February 25. No disciplinary action was taken because she would return to work with a doctor's excuse. Some of her absences were reported to the employer by the person with whom she rode to work. Ms. Burns did not have sick leave or vacation time to cover the absences beginning February 25 and, therefore, she was discharged as a result of them.

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). Ms. Burns was discharged as a result of her absences on February 25, 26, and 27. The administrative law judge cannot conclude that she failed to report the absences. She had communicated her absences to the employer through her ride on previous occasions without any repercussions. Therefore, she had no way of knowing that this was not an acceptable means of communicating the absences that began February 25.

Ms. Burns was acting in good-faith when she reported her absences through her ride because she did not have a home telephone. Inasmuch as she had been allowed to use this method in the past, the administrative law judge concludes that the absences were properly reported. The absences were due to illness for which Ms. Burns received medical attention. Illness constitutes reasonable grounds for missing time from work. Because the absences of February 25, 26, and 27 were for reasonable cause and were properly reported, they are all excused. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive.

For the reasons cited 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 April 8, 2008, reference 01, is hereby reversed. Ms. Burns was discharged by YMCA 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