

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MISTY L MCCREIGHT
Claimant

APPEAL NO. 08A-UI-06165-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MORNING SUN CARE CENTER
Employer

**OC: 07/01/07 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Misty L. McCreight (claimant) appealed a representative's June 30, 2008 decision (reference 04) that concluded she was not qualified to receive benefits, and the account of Morning Sun Care Center (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 21, 2008. The claimant participated in the hearing. Peggy Grothe, the administrator, and Leah McElhinney, the director of nursing, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in September 2007. The claimant initially worked part-time and later worked full time. The claimant worked as a certified nursing assistant. At the time of hire, the claimant received the employer's attendance policy. The policy informs employees they are required to try to find a replacement when they are unable to work as scheduled. If an employee is unable to find a replacement, the employer requires employees to notify the employer an hour before a scheduled shift that the employee is unable to work as scheduled. The employer's policy also indicates employees receive warnings when they have two or more unexcused absences in a three-month time period.

During her employment, the claimant received written warnings for attendance issues. On January 2, 2008, the claimant received a written warning for excessive absences. On May 13, the claimant received another written warning. The employer gave the claimant the May 13 written warning after she had more than two unexcused absences in three months and failed to call or report to work on April 11, 2008. In addition to giving the claimant a written warning, the employer also gave the claimant a three-day suspension. The employer warned the claimant on May 22 that if she did not start reporting to work as scheduled, she would be discharged.

On May 23, the claimant notified the employer she was unable to work as scheduled because she had to go to the hospital. The claimant went to the hospital because she had fears there were problems with her unborn child.

The claimant learned relatives from out-of-town were going to get together for a family dinner on Saturday, July 7, at 11:00 a.m. Some of the relatives had to leave before 2:00 p.m. The claimant wanted to go to the family dinner and tried to find a replacement. When the claimant could not find anyone to take her shift, she decided she would not go to work. The claimant did not contact the employer to report she would not be at work on June 7, 2008.

When the claimant did not report to work on June 7, 2008, McElhinney called her. The claimant never answered or returned McElhinney's call. Since this was the second time the claimant had not called or reported to work as scheduled in addition to her on-going attendance problems, McElhinney decided to discharge the claimant. McElhinney left a message on the claimant's phone that she was discharged because of excessive absences.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew in mid-May that her job was in jeopardy because of her on-going failure attendance issues. The claimant also knew the employer required her to notify the employer when she was unable to work as scheduled. On June 7, 2008, the claimant did not want to work because she wanted to visit with out-of-town family. Although the claimant tried to find a replacement, she was not successful. The claimant made the decision to attend the family get together instead of reporting to work as scheduled. The claimant's failure to inform the employer she would not be at work as scheduled, 6:00 a.m. to 2:00 p.m. on June 7, 2008, amounts to an intentional and substantial disregard of the employer's interests. The claimant committed work-connected misconduct on June 7, 2007. Therefore, as of June 8, 2008, the claimant is not qualified to receive benefits.

DECISION:

The representative's June 30, 2008 decision (reference 04) is affirmed. The employer discharged the claimant for committing work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 8, 2008. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw