

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DENISE A NEWMAN
222 E NORTH ST
MANLY IA 50456

CARE INITIATIVES
c/o JOHNSON AND ASSOCIATES
PO BOX 6007
OMAHA NE 68106-0007

Appeal Number: 04A-UI-02818-HT
OC: 02/08/04 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer, Care Initiatives, filed an appeal from a decision dated March 3, 2004, reference 01. The decision allowed benefits to the claimant, Denise Newman. After due notice was issued a hearing was held by telephone conference call on April 21, 2004. The claimant participated on her own behalf. The employer participated by Administrator Jack Musker and Registered Nurse Laura Brooke and was represented by UC Express in the person of Roxanne Bekaert.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Denise Newman was employed by Care Initiatives from December 5, 2003 until February 4, 2004. She was a full-time CNA. At the time of hire she received a copy of the employee handbook which set out the attendance and progressive disciplinary policies. New employees are on a 90-day probation and may be discharged during that time if more than two scheduled shifts are missed.

The claimant received a verbal and a written warning regarding missed shifts. One she missed due to being stranded out of town in bad weather, and the second because of personal problems. She was advised her job was in jeopardy.

On February 2, 2004, the claimant began her 10:00 p.m. until 6:00 a.m. shift. Around midnight she received a call from her husband who was threatening suicide. He had done so in the past and she had taken him to an emergency room where he received medication. On this occasion she notified Charge Nurse Laura Brooks she had to leave. Ms. Brooks told her she could not leave unless she had a replacement, otherwise the facility would be understaffed. Ms. Newman contacted another CNA who said she would be in "in a couple of hours." The claimant then left knowing that the facility was understaffed.

Administrator Jack Musker discharged the claimant on February 4, 2004, for missing three shifts during her probationary period.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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, (7) provide:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(7) 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.

The claimant had been advised her job was in jeopardy as a result of her absenteeism. The final absence was due to a family emergency which the claimant reported to the charge nurse. Although the claimant did not secure a replacement who arrived prior to her leaving, she did make the attempt. The claimant could have other arrangements to provide care for her husband such as calling an ambulance or the police, she apparently felt only she was capable of dealing with the situation and left. While this left the employer understaffed, the claimant did not act with malicious intent and to harm the employer. Disqualification may not be imposed.

DECISION:

The representative's decision of March 3, 2004, reference 01, is affirmed. Denise Newman is qualified for benefits provided she is otherwise eligible.

bgh/kjf