

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUZAN R TALIAFERRO
Claimant

APPEAL 15A-UI-07277-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**OC: 05/31/15
Claimant: Appellant (2-R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 19, 2015, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on July 28, 2015. Claimant participated. Employer participated through Hearing Representative Treve Lumsden, Administrator Jayme LeJeune, and Supervisor Jesus Cordoba. Employer's Exhibits 1 to 13 were received. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a housekeeper from December 30, 2014, and was separated from employment on February 20, 2015, when she was terminated.

Claimant called in sick for work on February 9 and 10, 2015. Claimant was next scheduled to work on February 13, 14, 15, and 17, 2015. On February 12, 2015, claimant was diagnosed with sciatica and high blood pressure. Due to these physical impairments, claimant was unable to work. On February 12, 2015, claimant spoke with her supervisor, Jesus Cordoba, by telephone. Claimant informed Cordoba of her diagnoses and that she could not work due to her physical condition. Claimant additionally asked that her status be changed to prn, which she hoped would allow her to work in the future when and if her condition improved. Cordoba informed claimant he would need to look into her request to change to prn status. Cordoba did not take claimant off the schedule for February 13, 14, 15, and 17, 2015.

On February 20, 2015, employer terminated claimant by letter for no-call/no-show absences on February 13, 14, 15, and 17, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(7) provides:

(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.

Here, employer claims it terminated claimant for excessive absenteeism. What actually occurred is that claimant requested a reasonable accommodation for her disabilities on February 12, 2015. Employer did not grant claimant's request and left her on the schedule. Iowa Code § 216.6 (previously 601A.6) requires employers to make "reasonable accommodations" for employees with disabilities. A medical leave of four days would not have been unreasonable. Because the last absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. Since the employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Claimant's discharge does not disqualify her for benefits.

The real issue is whether claimant is able and available for work. That issue was not addressed in the June 19, 2015, (reference 01) unemployment insurance decision.

DECISION:

The June 19, 2015, (reference 01) unemployment insurance decision is reversed. Claimant was not discharged for disqualifying reasons. This matter is remanded for a determination on the issue of whether claimant is able and available for work.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/pjs