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

REBECCA A GEIGER
Claimant

APPEAL NO. 11A-UI-09110-PT

ADMINISTRATIVE LAW JUDGE DECISION

AT&T MOBILITY SERVICES LLC
Employer

OC: 06/19/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 13, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 2, 2011. Employer participated by Patricia Ritchey and Susan Collins and was represented by Tom Kuiper. Claimant participated personally.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was employed from February 23, 2009 through June 22, 2011. She was discharged for absenteeism. Her final absence that caused her termination occurred on June 7, 2011 and was due to illness and was properly reported. The employer contends that claimant's attendance record had to be reviewed to determine whether claimant was eligible was for family medical leave. The last application for family medical leave was made in April 2011 and was denied at the end of April. The claimant was absent June 15, 16 and 17, 2011 but on each of these dates the claimant's absences were due to illness and were properly reported.

REASONING AND CONCLUSIONS OF LAW:

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 provides:

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.

871 IAC 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.

The last absence that caused her termination was due to illness and was properly reported. The claimant's testimony regarding whether this absence was properly reported is given greater weight than the employer's hearsay testimony. Absences due to properly reported illness are not unexcused. No disqualification is imposed.

DECISION:

The decision of the representative dated July 13, 2011, reference 01, is reversed. Benefits are allowed, provided claimant is otherwise eligible.

_____
Ron Pohlman
Administrative Law Judge

_____
Decision Dated and Mailed

rrp/css