

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**YESENIA HERNANDEZ**  
Claimant

**WELLMAN DYNAMICS CORP**  
Employer

**APPEAL 15A-UI-06980-JCT**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 05/24/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 8, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on July 21, 2015. The claimant participated personally. The employer participated through Christina Johnson, Human Resources Assistant.

**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: The claimant was employed full-time as a rotary filer and was separated from employment on April 23, 2015, when she was discharged for unexcused absenteeism.

The claimant last performed work on December 30, 2014 when she went on Family Medical Leave Act (FMLA) due to complications from her pregnancy. The claimant had her baby on March 27, 2015 and contacted the employer on March 30, 2015 from the hospital. The employer advised the claimant that once her FMLA expired, she needed to call the employer and they would put her on a personal unpaid leave until her doctor released her without restrictions. The employer and claimant both were sent an email by the employer's third-party vendor who handles FMLA, on April 3, 2015, advising the claimant she had exhausted FMLA. The claimant did not respond to the email. The employer then tried multiple times to call the claimant for an update on her status but could not reach the claimant whose phone was no longer working. The employer attempted to send two certified letters to the claimant as well. The claimant in January had previously responded to a certified letter, but testified she did not get up for mail while recovering and family members would come and leave with her children, but no one besides her was home to sign for the certified letter. The employer sent the claimant a final letter on April 15, 2015, advising the claimant she had five days to contact the employer or risk discharge. The claimant did not respond and separation was initiated. The claimant had previously been on maternity leave twice with the employer, but both pregnancies were

standard deliveries and without bed rest leading up to the births. The claimant was discharged for unexcused absenteeism because she had exhausted her FMLA and had not reported to work or contacted the employer about getting a personal leave.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides:

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.

In this case, the claimant was on an extended leave of absence associated with pregnancy complications. The credible evidence presented establishes the employer advised the claimant her FMLA would likely expire due to the additional time she needed off leading up to the baby's birth, and she would need to contact the employer to coordinate a personal leave of absence until she was released from work. The claimant did not respond to the multiple inquiries made by the employer and vendor to the claimant via mail, email and phone.

The administrative law judge is unpersuaded by the claimant's assertions that she could not retrieve her mail, her email, or access a phone, or alternately, that she believed it was acceptable to not be reachable by phone, by mail, or email but expect the employer would continue to allow her benefits associated with employment including to preserve her job. The administrative law judge understands the claimant was likely overwhelmed with balancing a recovery from pregnancy and her other children. However, it was the claimant's obligation to know or find out where she stood on her leave, especially since the employer had told her that she was probably going to exhaust her leave shortly after the baby was born, since she had taken several months off for bed rest prior to delivery, and not just the delivery itself. The employer made attempts by itself and through its vendor, to notify the claimant as to her job status, by making multiple calls, emails and sending letters. The employer also warned the claimant that if she failed to respond, she would lose her job. The claimant's failure to communicate or provide a means for the employer to communicate with her was by no fault of the employer. The claimant had reasonable grounds to be absent after the birth of her baby, but her lack of communication with the employer after her leave expired led to her discharge. Based on the evidence presented, the employer has met its burden of proof to establish the claimant's actions amounted to disqualifying job-related misconduct. Benefits are withheld.

**DECISION:**

The June 8, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

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