

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA K BEAL
Claimant

APPEAL NO. 09A-UI-10110-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARBIES
Employer

OC: 06/07/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Arbies filed an appeal from a representative's decision dated July 9, 2009, reference 01, which held that no disqualification would be imposed regarding Samantha Beal's separation from employment. After due notice was issued, a hearing was held by telephone on July 30, 2009. Ms. Beal participated personally. The employer participated by LuAnn Almon, Unit Director, and was represented by Alyce Smolsky of Talx Corporation.

ISSUE:

At issue in this matter is whether Ms. Beal was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Beal began working for Arbies on August 27, 2007. She was last employed full time as a crew trainer. She was discharged because of her attendance. The employer requires four hour's notice if an individual is going to be absent.

On May 28, Ms. Beal switched shifts with another employee and was to work on May 31. However, she called on May 31 to report that she would be absent due to illness. She called two hours in advance on June 1 and June 2 to report that she would not be at work because she was ill. The employer arranged for her to work on June 6 and June 7 to replace individuals who would cover her shifts on June 1 and 2. She was again absent on June 3 but found replacements to cover her hours, including those she was to cover for another individual. Ms. Beal's illness was resolved by June 5.

Ms. Beal was absent on June 9 because of car problems. When she called in, she was told she was going to be written up and that the warning could lead to her termination. The employer found someone to cover the June 9 hours. Ms. Beal was also absent June 10 and 11 because of car problems. She found her own replacement for both days. She was late reporting to work on June 12 and was discharged the same day. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Beal was discharged because of her attendance. She was not warned about her attendance until June 9. Thereafter, she only missed time from work on three dates. She was absent on June 10 and 11 but found replacements to cover her hours. She was late on June 12, the day of discharge.

Because Ms. Beal found her own replacements for June 10 and 11, both absences are considered excused. Her tardiness of June 12 is not excused as the evidence does not establish any reasonable cause for it. One period of unexcused absenteeism after warning is not sufficient to establish excessive unexcused absenteeism within the meaning of 871 IAC 24.32(7). While the employer may have had good cause to discharge, conduct that might warrant a discharge will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated July 9, 2009, reference 01, is hereby affirmed. Ms. Beal was separated from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs