

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHON M SCOTT

Claimant

APPEAL NO. 07A-UI-08221-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

**OC: 07/29/07 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 22, 2007, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 12, 2007. Claimant participated personally with witness and Representative Frank Jenaszak, Executive Vice President, AFSCME. Employer participated by David Bergeon, Human Resource Specialist and Lori Lindseth, Human Resource Generalist Two. Exhibits A and One were admitted into evidence.

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 last worked for employer on May 16, 2007.

Claimant was discharged on August 1, 2007 by employer because claimant over extended a leave of absence. Claimant had a FMLA leave approved through June 23, 2007. Claimant then took time off to July 23, 2007. Claimant was told to bring in a doctor's excuse. Claimant solicited a doctor's excuse that took her off for medical reasons through June 23, 2007 and indicated claimant was off for personal reasons through July 23, 2007. Claimant was off work due to the death of her grandmother. Claimant was entitled to three days bereavement leave as a result. Claimant was not able to provide medical documentation for the time period June 23, 2007 through July 23, 2007. Claimant was also further absent from July 23, 2007 through July 31, 2007. Claimant was brought in for a disciplinary conference on July 31, 2007. Claimant was offered work on July 31, 2007. Claimant refused to return that night because of childcare issues. Claimant asked for two additional months leave. Claimant was discharged the next day due to the chronic absenteeism. Employer has a progressive disciplinary program. Employer did not follow the program because claimant did not come in to work for such a long period of time. Claimant was a union member and aware of the policy on absenteeism.

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning absenteeism. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant was absent without cause from June 23, 2007 through July 30, 2007. Claimant had three days that were excusable during that period in question. Claimant provided only a doctor's note indicating that claimant was off due to personal reasons. The progressive discipline did not apply because claimant was absent for such along time. Claimant had dozens of chances to return to work subsequent to June 23, 2007. Since claimant did not show up for work the warnings could not be issued. The lack of warnings was the direct and proximate result of claimant's chronic unexcused absenteeism. This is misconduct as defined by Iowa law.

Claimant had the opportunity to ask for additional FMLA after June 23, 2007 but failed to ask for such leave. Finally, claimant's failure to return to work on July 31, 2007 indicates an unwillingness to return to work. In conclusion, claimant was absent for non excusable reasons from June 23, 2007 through July 30, 2007 with the exception of three days. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated August 22, 2007, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css