

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYLA SCHULTE
Claimant

APPEAL NO. 10A-UI-02985-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ZC STERLING INS AGENCY INC
Employer

**Original Claim: 01-24-10
Claimant: Appellant (2)**

Section 96.5-2-a –Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 19, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 6, 2010. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the notice.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer service representative for ZC Sterling Insurance Agency from September 22, 2008 to January 28, 2010. She was discharged for excessive absenteeism after being warned. Most of her absences were due to her children's illnesses, because the daycare will not take sick kids. The claimant missed numerous days in January 2010 due to a loss of electricity resulting from a snow and ice storm. Her daughter needs breathing treatments and her son had bronchitis and they had to move around to different family member's homes due to the loss of power. The claimant always reported her absences but had no other options other than to stay home and care for her children.

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 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(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.

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of job misconduct as defined by Iowa law. The employer failed to meet its burden of proof. Therefore, work-connected misconduct has not been established in this case and benefits are allowed.

DECISION:

The February 19, 2010, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw