

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

BOBBIE J RUBY  
238 N MOORE ST  
OTTUMWA IA 52501-4330

GOOD SAMARITAN SOCIETY INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-02653-CT  
OC: 01/29/06 R: 03  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Good Samaritan Society, Inc. filed an appeal from a representative's decision dated February 21, 2006, reference 01, which held that no disqualification would be imposed regarding Bobbie Ruby's separation from employment. After due notice was issued, a hearing was held by telephone on April 26, 2006. Ms. Ruby participated personally. The employer participated by Fred Metcalf, Human Resources Associate.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Ruby was employed by Good Samaritan

Society, Inc. from September 25, 2002 until December 27, 2005. She worked 30 hours per week as a certified nursing assistant in the care facility operated by the employer.

Approximately two months before Christmas, Ms. Ruby asked that she not be scheduled for December 25. She believed her grandmother's death was imminent and wanted to spend time with her as it was likely to be her last Christmas. When she discovered that she was scheduled to work on December 25, Ms. Ruby gave notice that she would not be present. She did not report to work on December 25 and, because she had already told the employer that she would not be there, did not call in. As a result of the absence, she was discharged effective December 27, 2005.

Ms. Ruby was 30 minutes late due to oversleeping on April 10, 2005. She had not been disciplined because of any attendance issues. The above matter was the sole reason for her discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Ruby was separated from employment for any disqualifying reason. 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. Ruby was discharged because of her absence of December 25, 2005. Although she had requested to have the day off, the request was denied. However, she gave notice that she would not be at work on December 25. Therefore, it is concluded that the absence was properly reported even though she did not call on the day of the absence. The absence is unexcused as it was for a purely personal matter, to spend time with her grandmother.

Ms. Ruby's only other period of unexcused absenteeism was the tardiness of April 10, 2005. No disciplinary action was taken at that time. Inasmuch as Ms. Ruby was never warned that she was in danger of losing her job because of her attendance, she had no way of knowing that the absence of December 25 would result in her discharge. Had she known that her job was in jeopardy, she may well have made a different decision regarding December 25. The two unexcused absences identified herein are not sufficient to establish excessive unexcused absenteeism within the meaning of the law. In so concluding, the administrative law judge has considered the lapse of time between the absences, eight months, as well as the lack of prior disciplinary action.

While the employer may have had good cause to discharge Ms. Ruby, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has not been established by the evidence. Accordingly, benefits are allowed.

#### DECISION:

The representative's decision dated February 21, 2006, reference 01, is hereby affirmed. Ms. Ruby was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs