

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE C ENSLEY
Claimant

APPEAL NO. 11A-UI-07621-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

**OC: 05/01/11
Claimant: Appellant (2)**

Section 96.5(2) – Discharge

STATEMENT OF THE CASE:

The claimant, Michelle Ensley, filed an appeal from a decision dated June 3, 2011, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 11, 2011. The claimant participated on her own behalf. The employer, Team Staffing, participated by Claims Administrator Sarah Fiedler.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Michelle Ensley was employed by Temp Associates from August 16, 2010 until April 14, 2011. She was assigned during this time to the client company, Winegard. The claimant's last day of work was March 31, 2011, and her next scheduled day was April 3, 2011. She notified the employer on that day she was ill and trying to get in to see a doctor. On April 6, 2011, she called and said she had been seen in a clinic but had to be referred to a specialist. On April 8, 2011, she spoke with Account Manager Nicole Rice who told her she would need to bring in a doctor's excuse for all the days she had missed.

The claimant called in each day for April 10 through 14, 2011. She had not been able to be seen by the specialist until April 15, 2011, but had gone to an emergency room on April 12, 2011, to get a statement releasing her to return to work on April 13, 2011. She had taken this release to Winegard late in the evening on April 12, 2011, and was told by the supervisor it would be faxed to Temp Associates. This was apparently not done. When she appeared for work on April 13, 2011, she was told she would have to talk to Ms. Rice before returning to work.

On April 14, 2011, Ms. Rice told Ms. Ensley that Winegard had notified Team Staffing it would not hold her position any longer. The clinic, the emergency room, and the specialist would not

provide an excuse for work missed prior to being seen by medical personnel in that office and she was unable to obtain an excuse for the days she missed.

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(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.

The claimant was released from work for absenteeism. But, the absences were due to illness and properly reported. A properly reported illness cannot be considered misconduct, as it is not volitional. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The fact she was not able to obtain an excuse appears to be the result of having been seen by three different medical offices that were unwilling to provide excuses for days missed prior to being seen in that particular office. The failure to provide a doctor's excuse was not a willful and deliberate refusal to meet the employer's request.

The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

The claimant was discharged, but not for substantial misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of June 3, 2011, reference 01, is reversed. Michelle Ensley is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw