

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN K SHEETS
Claimant

APPEAL NO. 08A-UI-07928-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**OC: 08/03/08 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Care Initiatives (employer) appealed a representative's August 28, 2008 decision (reference 01) that concluded Karen Sheets (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 17, 2008. The claimant participated personally. The employer was represented by Lynn Corbeil, Attorney at Law, and participated by Cheryl Mercer, Administrator; Linda Samuelson, Laundry Supervisor; and Jamie Garner, Certified Nursing Assistant. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the 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 that: The claimant was hired on September 21, 2000, as a full-time laundry assistant. The claimant signed for receipt of the employer's handbook on June 25, 2002, and April 17, 2008. The handbook indicates that the claimant should notify her supervisor or charge nurse to properly report an absence. The employer issued the claimant written warnings on January 3 and 29, 2007, and June 6, 2008, for performance issues and failure to follow instructions. The claimant signed each warning. The employer reprimanded the claimant on January 29, 2007, for not leaving work when she was ill and being unable to properly perform her work. The employer notified the claimant that further infractions could result in termination from employment.

On August 5, 2008, the claimant appeared for work at approximately 5:30 a.m. She was scheduled to work until 2:00 p.m. She spoke to a co-worker at approximately 6:00 a.m. She started her duties and suddenly felt nauseous. She threw up in the wastebasket. The claimant did not see charge nurse and she knew her supervisor was not at work yet. She wrote a note saying she was leaving because she was sick and drove home. She vomited when she

reached home. At approximately 10:30 a.m. the claimant telephoned the employer. The employer terminated the claimant for failure to properly report her absence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Unreported absences do not constitute job misconduct if the failure to report is caused by mental incapacity. Roberts v. Iowa Department of Job Service, 356 N.W.2d 218 (Iowa 1984). The employer must establish not only misconduct but that there

was a final incident of misconduct which precipitated the discharge. The last incident of absence was an improperly reported illness. The claimant's absence does not amount to job misconduct because the claimant could not properly report her absence due to vomiting. The claimant was warned previously that she must leave work when she is sick or risk further warning. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's August 28, 2008 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css