

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANNON L SNODGRASS**

Claimant

**SAC & FOX TRIBE**

**MESKAWKI BINGO CASINO & HOTEL**

Employer

**APPEAL NO. 13A-UI-03697-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/03/13**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism  
871 IAC 24.32(8) – Current Act

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated March 25, 2013, reference 01, that held the claimant was not discharged for misconduct on February 14, 2013 and benefits are allowed. A hearing was held on May 1, 2013. The claimant participated. Lucie Roberts, HR Director, and Sandra Dirks, Manager, participated for the employer. Claimant Exhibit A and Employer Exhibit One were received as evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the witness testimony and having considered the evidence in the record finds that: The claimant worked as a full-time esthetician/nail tech from May 9, 2007 to February 9, 2013. The claimant received the employer attendance policy that provides a 12-point attendance accumulation with a rolling 12-month period is termination. The employer issued claimant a final written warning on December 7, 2012 she had 11 points. Claimant has a history of being late to work.

The claimant has power of attorney to make medical decisions for her father who resides at the Iowa Veterans Home in Marshalltown, Iowa. Due to a medical emergency, he was transported to the Des VA hospital on February 12 for treatment. He was later moved to Iowa Methodist the following day. Claimant called in an absence on February 12 to the employer for this reason. She needed to be present at the hospital to sign medical documents for her father's treatment.

The employer discharged claimant on February 13 for incurring 12 attendance points in violation of policy. Although the employer accepts personal medical excuses for missing work, it does count at least one point for an absence for this reason.

**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(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.

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 administrative law judge concludes that the employer failed to establish a current act of misconduct in the discharge of the claimant on February 13, 2013, for excessive "unexcused" absenteeism.

Claimant received an appropriate warning in December 2012 for excessive unexcused absences that does include late-to-work issues. The employer must establish a current act of misconduct to deny claimant benefits.

The claimant was absent from work on February 12/13 for an excusable reason. She needed to make health care decisions for her father in an emergency situation and sign hospital paperwork. No current act of misconduct is established for this reason as the employer gave her the February 12 absence point that is not job disqualifying misconduct.

**DECISION:**

The decision of the representative dated March 25, 2013, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct in connection with employment on February 13, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/tll