

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA A BRENNER**  
Claimant

**APPEAL NO. 12A-UI-01168-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HAWKEYE SOW CENTERS INC**  
Employer

**OC: 12/25/11  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Jessica Brenner, filed an appeal from a decision dated January 26, 2012, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 27, 2012. The claimant participated on her own behalf. The employer, Hawkeye Sow Centers, participated by Human Resources Manager Tricia Adams.

**ISSUE:**

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

**FINDINGS OF FACT:**

Jessica Brenner was employed by Hawkeye Sow Centers from February 21 until December 29, 2011 as a full-time herdsman. She received three written warnings for attendance, was demoted from salaried to hourly as a result of absenteeism and her evaluation marked her down for the attendance problems as well. The employer informed her several times her job was in jeopardy because of her absenteeism.

The usual reason for absenteeism was lack of child care or personal illness. If an employee is absent more than one day for the same illness the employer would only count one absence if a doctor's excuse was provided. Ms. Brenner was gone several times for an illness of more than one day but never provided a doctor's note to decrease her number of absences.

On December 26, 2011, she was in another city with a family friend who was in the hospital. She did not call her supervisor to report she would be late and was two and one-half hours late to work. She was discharged by Supervisor Dennis Kollasch on December 29, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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 had been advised her job was in jeopardy as a result of her absenteeism. The absences were due to lack of child care for her daughter and for personal illness. She could have reduced the amount of absences by getting a doctor's excuse for absences of more than one day due to these illnesses but declined to do so. Matters of purely personal consideration, such as lack of child care, are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984).

The final incident was a tardy of two and one-half hours when she chose to be with a family friend in the hospital rather than go to work and she did not call her supervisor to say she would be late. This is an unexcused absence. In conjunction with the other incidents, this constitutes

excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

**DECISION:**

The representative's decision of January 26, 2012, reference 02, is affirmed. Jessica Brenner is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs