

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENISE L KING**

Claimant

**APPEAL NO. 10A-UI-01628-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NORDSCHOW, C D "NORDSCHOW, E EL  
WINDRIDGE IMPLEMENTS LLC**

Employer

**OC: 12/20/09**

**Claimant: Appellant (1)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated January 21, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 10, 2010. Claimant participated. Employer participated by Eric Nordschow, general manager, and Jeannie Pecinovsky, business office/payroll. The record consists of the testimony of Eric Nordschow; the testimony of Jeannie Pecinovsky; the testimony of Denise King; and Claimant's Exhibit A.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer does agricultural equipment repairs, sales and service. There are three locations. The claimant worked in the Elkader facility. She was a full time service write. She began her employment on December 26, 2007. Her last day of work was December 4, 2009. She was terminated on December 19, 2009, for excessive unexcused absenteeism.

The incident that directly preceded the claimant's termination occurred on December 7, 2009. The claimant called Eric Nordschow to report that she would be late for work because she was going to have a medical test done. Mr. Nordschow agreed to allow the claimant to have the test done but expected her to be at work at approximately 10:00 a.m. The claimant never returned to work and did not notify Mr. Nordschow. She failed to show up for work as scheduled during the week of December 7, 2009, and the week of December 14, 2009. She did not notify Mr. Nordschow or Ms. Pecinovsky that she would be absent on those days as she was required to do.

The claimant had had previous unexcused absences from work from September 21, 2009 through September 28, 2009, and October 22, 2009 through November 2, 2009. She never notified the employer that she would be absent during those weeks. As a result of these absences, the claimant was notified personally by Mr. Nordschow and in writing that any further absences must be reported to Mr. Nordschow or Ms. Pecinovsky only and that if the absence was due to illness, then a doctor's excuse had to be provided. The claimant's absence in September 2009 was due to unspecified illness and the absence in October and November 2009 to emotional problems.

## **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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) Absence due to illness and other excusable reasons is deemed excused if the employee properly notified the employer. See Higgins, supra, and 871 IAC 24.32(7). The employer has the burden of proof to show misconduct.

In this case, the evidence clearly established excessive absenteeism. The issue is whether the claimant's absenteeism is excused under Iowa unemployment insurance law. As a general

rule, absence due to illness is excused provided the employee properly notifies the employer. The claimant testified that the reason she was absent from work in December 2009, was due to illness. That would be an excused absence so long as she properly notified her employer about her absence. The claimant did not follow her employer's notification policy and therefore her absence is deemed unexcused.

The evidence showed that the claimant had had attendance problems prior to December 7, 2009. She would not show up for work and would not notify her employer that she would not be at work nor would she provide a reason for her absence. Mr. Nordschow credibly testified that he personally met with the claimant and told her that if she was going to be absent, she needed to contact him or Ms. Pecinovsky and that if illness was the reason for her absence, a doctor's excuse needed to be provided. The claimant acknowledged that she knew this was the proper notification procedure. She even followed that procedure when she called Mr. Nordschow on December 7, 2009, to say that she would be late. Thereafter she did not call either him or Ms. Pecinovsky to notify them that she was sick and would not be at work.

The claimant testified that she tried to contact Mr. Nordschow and that he was not available. This testimony is not credible and is rejected. The claimant had a company issued phone. Even if Mr. Nordschow was not available for one call, that does not explain her failure to ever contact him or have someone else contact him on her behalf if she truly was too sick. The claimant could also have contacted Ms. Pecinovsky. The claimant said she made one call and got voice mail and did not leave a message. She assumed the employer knew she was sick because she had told the staff at Elkader she was sick. She admitted, however, that she knew this was not an acceptable means of contacting her employer. She could not explain why she could contact the Elkader office but could not contact either Ms. Pecinovsky or Mr. Nordschow. The administrative law judge concludes that claimant deliberately chose not to follow the notification policy outlined by her employer. Misconduct due to excessive unexcused absenteeism is established. Benefits are denied.

**DECISION:**

The decision of the representative dated January 21, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs