

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

NIKITA MITCHELL
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Appeal Number: 05A-UI-04340-LT
OC: 04-03-05 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code §96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the April 18, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 16, 2005. Claimant did participate. Employer did participate through Melissa Asr.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time sanitation worker through March 31, 2005 when she was discharged. Employer required mandatory seven-day workweeks from July 2004 through the end of January 2005. Claimant punched in on March 31 and her supervisor told her to leave

and come back in on April 1 and speak with Melissa Asr or Dorothy. Claimant and her three children had the flu at varying times from February 28 through March 6, 2005. The children were not allowed to attend school when ill, and claimant provided employer with all medical documentation she had for that period of absence. Melissa Asr did not notify claimant that the information provided was not sufficient to meet Family Medical Leave Act (FMLA) requirements, and all communication (or lack thereof) was handled through claimant's supervisor, Jimmy Banks, who is still employed but did not participate in the hearing. Claimant was absent again on March 26 and 27 after she found out her babysitter was leaving her young son alone at night while claimant worked. Claimant arranged for her mother to come from Chicago after a couple of days to care for the children. All other absences were related to the reported illness of claimant or one or more of her children. Claimant was tardy on November 11, 18 and 21, 2004 because of the tardiness of the carpool driver. Employer has a no-fault absenteeism policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Absences related to lack of childcare are generally held to be unexcused. Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). However, a good faith inability to obtain childcare for a sick infant may be excused. McCourtney v. Imprimis Technology, Inc., 465 N.W.2d 721 (Minn. App. 1991).

The employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Reported absences related to illness are excused for the purpose of the Iowa Employment Security Act. Since employer did not tell claimant the documentation was insufficient after its receipt, claimant had no knowledge additional information was required to retain her employment and no misconduct has been established in that regard. The claimant's discovery that her babysitter was leaving her son alone at night while claimant worked was a legitimate emergency for missing work for two days after having had reliable child care up to

that point. Thus the two absences related to childcare are excused. Three instances of tardiness in November 2004, during a period in which claimant was working seven days per week for seven months, was not excessive. Because the final absence for which she was discharged was not related to misconduct, no disqualification is imposed.

DECISION:

The April 18, 2005, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/s