

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEANNA R CAMERON**  
Claimant

**APPEAL NO. 11A-UI-04433-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOODWILL INDUSTRIES**  
Employer

**OC: 01/23/11  
Claimant: Appellant (4)**

Section 96.5-2-a – Discharge  
Section 96.4-3 – Able and Available for Work  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a representative's decision dated March 24, 2011, reference 02, which denied unemployment insurance benefits finding the claimant had voluntarily quit work on December 9, 2010 because of a non-work-related illness or injury. After due notice, a telephone hearing was held on April 28, 2011. Claimant participated personally. Participating on behalf of the claimant was Ms. Michelle VanHyhe, Attorney Legal Aid. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

**ISSUE:**

The issue is whether the claimant filed a timely appeal, whether the claimant was discharged for misconduct sufficient to warrant the denial of benefits, and whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: The claimant's appeal in this matter was filed beyond the ten-day time limit due to factors beyond the claimant's control.

Deanna Cameron was employed by Goodwill Industries for approximately seven months as a part-time group aide in a residential home setting before being discharged on December 9, 2010.

Ms. Cameron did not voluntarily leave her employment with Goodwill Industries but was discharged from employment while the claimant was unable to work for medical reasons. The employer was aware of the claimant's hospitalization/institutionalization and was aware that the claimant had not been released to return to work at the time that she was discharged from employment.

Ms. Cameron continued to be hospitalized/institutionalized until January 18, 2011 thereupon the claimant was released to resume full employment. The claimant has actively and earnestly sought work since filing her claim for benefits effective January 23, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination from employment and what misconduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988).

The Iowa Supreme Court ruled in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) that excessive unexcused absenteeism is a form of misconduct. The court further held, however, that absence due to illness or other excusable reasons is deemed

excused if the employee properly notified the employer. See Higgins, supra, and 871 IAC 24.32(7).

Inasmuch as the evidence in the record establishes that the claimant was discharged based upon her inability to report for scheduled work during a time that she was absent through no fault of her own and the employer had been notified, the administrative law judge concludes that misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown. Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated March 24, 2011, reference 02, is modified in favor of the appellant. Benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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