

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA E SMITH
Claimant

APPEAL NO: 12A-UI-10461-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

K MART CORP
Employer

OC: 07/29/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 22, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Joe Connelly, the store manager, and Tina Skibbe, the human resource representative, appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in September 2010. She worked as a part-time pharmacy technician. When the claimant started working, the employer gave her information about the employer's attendance policy. The policy informs employees that during a six-month period if they accumulate six infractions, they will be terminated. For an unscheduled absence the employee receives one infraction. (Employer Exhibit One.)

During her employment, the claimant was absent or late to work in 2012 as follows:

February 24	called in ill	1 infraction
March 6	called in ill	1 infraction
April 28	late	½ infraction
May 21	called in ill	1 infraction
June 4	called in ill	1 infraction
June 30	called in ill	1 infraction
July 30	called in ill	1 infraction

The employer gave the claimant a final written warning on July 2. (Employer Exhibit Two.) The claimant declined to sign the written warning because she had doctor's statements verifying she had been ill on some days. The employer received a doctor's statement for her May 21 and June 30 absences. Earlier in the year, the claimant informed the employer she had been diagnosed with some health conditions that could adversely affect her health.

After the claimant called in that she was ill on June 30, 2012, the employer discharged her because she had violated the employer's excessive absenteeism policy by accumulating 6.5 infractions.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

Based on the employer's attendance policy (a no-fault policy) the claimant violated it when she was again ill and called in her absence on July 30. When the claimant was unable to work as scheduled she properly notified the employer she was ill and unable to work. She provided a doctor's excuse for the May 21 and June 30 absences. She had a doctor's note of the July 30 absence but did not give it to the employer. The employer established justifiable reasons for discharging the claimant, but she did not commit work-connected misconduct. As of July 29, 2012, she is qualified to receive benefits.

DECISION:

The representative's August 22, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of July 29, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs