

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKI L RANDOLPH
Claimant

APPEAL NO. 10A-UI-12639-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST PROFESSIONAL STAFFING LLC
Employer

OC: 07/25/10
Claimant: Appellant (2)

Section 96.5-2-A – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 3, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 27, 2010. Claimant participated. Employer participated by Jim Bruno, Owner, and Patty Moore, Staffing Specialist. The record consists of the testimony of Jim Bruno; the testimony of Patty Moore; the testimony of Vicki Randolph; and Claimant's Exhibits A-B.

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 is a temporary employment agency. The claimant began accepting assignments from the employer on March 31, 2008. The majority of the claimant's assignments were with a company called Cahaba, which has a federal contract involving Medicare. The claimant's last day of work was July 30, 2010. She was terminated on July 30, 2010, for excessive absenteeism.

The claimant had requested days off to watch her grandson play in a baseball tournament. One of the days she asked to have off was July 27, 2010. This request was denied by Cahaba. On July 26, 2010, the claimant slipped and fell and called in sick on July 27, 2010, and July 28, 2010. She was informed that she must provide a doctor's slip. The claimant had a doctor's slip that excused her from work on July 27, 2010, and July 28, 2010. The Cahaba supervisor found out that the claimant had been telling other employees how exciting the game had been. The claimant had 29 absences during the tenure of her assignment. Cahaba decided to end the claimant's assignment and the claimant was informed of this on July 30, 2010. The reason the assignment ended was excessive absenteeism. The employer declined to provide the claimant another assignment since her attendance had been so poor.

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 leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct 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 1994). 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). In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

In this case the evidence does not show a current act of misconduct. Although the claimant clearly had excessive absences from work, her final absence was due to illness and the claimant properly notified the employer of the absence. The administrative law judge can understand the employer's suspicion about the absence, given the fact that the claimant had asked for the day off and been denied and then remarked to co-workers that the game had been exciting. The claimant testified that the game in question was on a Thursday and that she had not gone to the game on July 27, 2010. She did have a doctor's excuse and while a great deal of information is not provided on that slip, the claimant was excused from work on July 27, 2010 and July 28, 2010. Since the claimant's final absence is therefore excused under

unemployment insurance law, there is no current act of misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated September 3, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css