

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA J WOOLLUMS
Claimant

APPEAL NO. 09A-UI-04672-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ATRIUM VILLAGE INC
Employer

OC: 02/22/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Atrium Village, filed an appeal from a decision dated March 12, 2009, reference 01. The decision allowed benefits to the claimant, Samantha Woollums. After due notice was issued, a hearing was held by telephone conference call on April 22, 2009. The claimant participated on her own behalf. The employer participated by Administrator Dorothy Goody.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Samantha Woollums was employed by Atrium Village from July 8, 2008 until February 18, 2009 as a full-time CNA. During the course of her employment she missed a great deal of work due to personal problems, childcare, lack of transportation and illness. The employer did not issue her any formal written warnings. Administrator Dorothy Good left her a voice mail on February 3, 2009, asking her to come in to discuss various matters such as insurance, but the claimant never responded.

On February 17, 2009, the claimant was absent from work and did not find her own replacement. Company policy requires an employee to either find a replacement or come to work. She was absent due to a serious migraine. On February 18, 2009, Ms. Goody received phone calls from four other staff members saying the claimant had asked them to work for her but they had refused. Most of the staff were upset about the amount of time the claimant had been absent from work and were “tired” and “fed up.” Ms. Goody then left the claimant a voice mail message informing her if she did not come to work that night she was fired. The claimant did not come to work that night and was not able to find a replacement. She had been seen in the emergency room for the migraine.

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.

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.

The employer did not issue the claimant any formal discipline about her absenteeism. Even though Ms. Goody admitted the claimant had missed too much work and had not brought in doctor's excuses as required, she was not fired because the "needed her." She was never told her job was in jeopardy until the voice message left by Ms. Goody on February 18, 2009.

The final absences were due to illness and the claimant did make a diligent and good-faith effort to find a replacement. Those she contacted declined and there was no way she could force someone to work on her behalf. She did not present any statement from her doctor to the employer because she knew she had already been fired for not coming to work on February 18, 2009.

Although she did not notify the employer she would be absent on that final day there is no other record of her being a no-call/no-show to work. The final absence was unexcused because she did not properly report her absence. See Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). But this is one unexcused absence and does not rise to the level of being excess.

The employer failed to meet its burden of proof to establish the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984). The claimant had not been properly warned her job was in jeopardy because of her absenteeism and did not realize it was because of the large amount of leeway which had been afforded to her absenteeism in the past. Disqualification may not be imposed.

DECISION:

The representative's decision of March 12, 2009, reference 01, is affirmed. Samantha Woollums is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css