

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACEY C SMITH
Claimant

APPEAL NO. 10A-UI-16011-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 10/17/10
Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 9, 2010 determination (reference 03) 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 determination for reference 03 is identical to references 01 and 02 with one minor difference. The employer's account for reference 01 is -019, reference 02 is -025 and reference 03 is -024. Since these determinations are identical, the decisions issued for references 01 and 02 (10A-UI-16009-DWT and 10A-UI-16010-DWT) are the same decisions issued for this decision, appeal 10A-UI-16011-DWT.

The claimant participated in the hearing. Layne Gross, Lori Welch and Gwen Musick appeared the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not 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 May 2005. She worked as a full time certified nursing assistant. The employer's written attendance policy informs employees that if they have eight unscheduled absences in a six-month time frame, they can be suspended or discharged. If an employee finds another person to work a shift for her, the employee's absence is not noted as an unscheduled absence.

During her employment, the claimant received a final written warning for unscheduled absences on January 13, 2010. She received another final written warning on March 12 after she left work on March 8 to take her child to a scheduled doctor's appointment. The appointment was noted on the daily schedule, but the claimant only talked to the charge nurse when she left on March 8 and did say anything to the director of nursing or assistant director of nursing

After the March 12 final written warning, the claimant did not have any attendance problems again until June 3. On June 3 and 13, the claimant was late for work. On June 17, she notified the employer that she was unable to work for personal reasons. On July 5, and 6, and August 2, 17, and 20, the claimant did not report to work because her child was ill. The claimant was late for work on July 30, and September 17. The claimant had a migraine on August 21 and 22 and was unable to work. On July 30, the employer gave the claimant a written warning for oversleeping and told her that she needed to improve her attendance.

On September 17, the claimant was riding to work with a co-worker. On the way to work, her co-worker hit a deer. Before her 6 a.m. shift, the claimant notified the employer about the accident. By the time her co-worker was able to contact someone, they went back to the claimant's home to pick up her vehicle, and they did not get to work until 10 a.m.

On October 4, the claimant called the employer to report she was unable to work because her child was ill. The claimant's child had an ear infection, but she did not take him to the doctor. The claimant overslept on October 5 and was about 90 minutes late for work.

Even though the claimant was a long-term employee, when she did not show improvements in her attendance after she received final written warnings for attendance on January 13 and March 12 and was again counseled on July 30, the employer discharged the claimant on October 5 because of repeated attendance issues. The October 4 absence was the claimant's eighth unscheduled absence in six months.

The claimant established a claim for benefits during the week of October 17, 2010. She has filed for and received benefits since October 17, 2010.

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).

The facts establish the claimant knew or should have known her job was in jeopardy on July 30 when the employer again talked to her and gave her a written warning for attendance issues. The facts also establish that even though the claimant's husband was not working August through October 5, the claimant did not ask him to take care of their child when the child was ill. In August, the claimant provided doctor's notes when she or her child was ill. Even though the claimant reported that her son had an ear infection on October 4, she did not take him to a doctor. The final straw occurred when the claimant was almost 90 minutes late for work on October 5 because she again overslept.

The claimant's repeated unscheduled absences, failure to work as scheduled after she had been warned, and failure to find another employee to work for her, amounts to work-connected misconduct. As of October 17, 2010, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's November 9, 2010 determination (reference 03) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 17, 2010. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is Remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw