

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE M HEATH
Claimant

APPEAL NO. 10A-UI-07701-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

**Original Claim: 01/10/10
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Stephanie Heath filed an appeal from a representative's decision dated May 24, 2010, reference 07, which denied benefits based on her separation from ABCM Corporation. After due notice was issued, a hearing was held by telephone on July 15, 2010. Ms. Heath participated personally and Exhibit A was admitted on her behalf. The employer participated by Cara Mayner, Human Resources, and Lori Platt, Office Manager.

ISSUE:

At issue in this matter is whether Ms. Heath was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Heath began working for ABCM Corporation on February 2, 2010 as a full-time administrative assistant. She was discharged because of her attendance and for a failure to follow instructions.

Ms. Heath was late reporting to work on at least 16 times during the course of her employment. Eleven of the occasions were by five minutes or less. She took a longer lunch break without authorization on two occasions. She was allowed to extend her lunch break on two occasions to attend doctor appointments. Ms. Heath was absent two full days due to illness and one day because she was snowed in. She left early on one occasion because her daughter was ill. She received a written warning about her attendance on April 19 and was not late thereafter. She was absent due to illness on April 28. She was supposed to report for work on April 29 and then leave for a dental appointment.

Ms. Heath had to be seen in the emergency room on April 29. She was there from 7:00 a.m. until 4:00 p.m. She was receiving treatment and undergoing testing due to her problem pregnancy. She attempted to send a text message to her supervisor that morning but found that the supervisor did not have text messaging. She could not use her cell phone to make calls

from the hospital. She did not make any other attempt to call the employer. When she returned to work on April 30, she was discharged.

In making the decision to discharge, the employer also considered the fact that Ms. Heath left a caller on "hold" on April 26. She had paged the individual to whom the call was directed. The individual had not picked up when Ms. Heath received a call that required her to leave work. She asked a coworker to pick up the call if it was routed back to the switchboard. On April 27, her supervisor made a point of telling her to take the mail out that morning so the carrier would take it when mail was delivered. Ms. Heath neglected to do so.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). To sustain a disqualification from benefits, there must be a final act of misconduct that is current in relation to the discharge date. In the case at hand, Ms. Heath's discharge was prompted by her absence of April 29. There is no doubt but that her tardiness prior to April 19 constituted excessive unexcused absenteeism, as there was generally no good reason for the tardiness. She had not been warned about her tardiness prior to April 19. She did not have any occasions of tardiness after the employer warned her that it was jeopardizing her continued employment.

Ms. Heath had only two absences of a full day after the written warning of April 19 and both were for medical reasons—problems with her pregnancy. It is undisputed that the absence of April 28 was properly reported to the employer. The administrative law judge finds that she had good cause for the failure to give notice on April 29. She did make a good-faith attempt to reach the employer by text message on the morning of April 29. The remainder of her day was spent receiving treatment and undergoing tests. Her failure to make further attempts to contact the employer constituted excusable neglect and not a willful disregard of policy. For the above reasons, it is concluded that the absences of April 28 and April 29 are both excused. The most prior period of unexcused absenteeism was the tardiness of April 12, which was not a current act at the time of discharge.

For the reasons cited herein, the administrative law judge concludes that there was no current unexcused absence in relation to the discharge date. The employer also considered the fact that Ms. Heath left a caller on hold on April 26. The caller was still waiting for her party to pick up when Ms. Heath had to leave. Before leaving, she made arrangements for a coworker to pick up the call if it rotated back. The employer did not dispute her testimony that the caller would be routed back to the switchboard if the call was not picked up. For the above reasons, Ms. Heath's actions did not constitute a disregard of the employer's standards. It is true that she failed to take the mail out as directed on April 27, a failure that constituted negligence on her part. Her failure was not so defiant as to constitute insubordination. Simple negligence is not disqualifying unless it is so recurrent as to manifest a substantial disregard of the employer's standards or interests. The employer's evidence failed to establish that Ms. Heath was negligent to this degree.

The administrative law judge has considered all of the evidence and the contentions of the parties. While the employer may have had good cause to discharge Ms. Heath, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated May 24, 2010, reference 07, is hereby reversed. Ms. Heath was discharged, but misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw