

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIFFANY R SHEPHERD
Claimant

APPEAL NO: 14A-UI-04039-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DM SERVICES INC
Employer

OC: 03/23/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 9, 2014 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated at the May 7 hearing. Rachel Ottens, a human resource administrator, appeared on the employer's behalf. During the hearing, Claimant Exhibit A was 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 August 2009. The claimant worked about 30 hours a week as a credit specialist. The claimant received information about the employer's attendance policy when she started working and when she was put on probation.

The employer's policy informs employees that if their absenteeism rate is more than 15 percent in a rolling six-month time frame, the employee could be put on probation. The employer put the claimant on probation on December 9, 2013, because her absenteeism rate was over 16 percent for the last six months. The claimant understood that if at the end of her 90-day probation she had an absenteeism rate of more than 15 percent she would be discharged.

After the employer put the claimant on probation, she was ill and unable to work December 16, 17 and 18. She went home early on December 20 because of the weather and did not work on December 27 and 30. On December 30 the claimant reported she was ill and unable to work. On January 3, 6, 7, 29, 30 and 31, the claimant left work early for personal reasons, adverse weather conditions or because she was ill and unable to work. February 4 through 10, the claimant notified the employer she was ill and unable to work. The employer excused these absences. On February 11, the claimant left work about an hour after her shift started because she was still ill.

On February 20, the employer gave the claimant a warning that her absenteeism rate was 20.49%. The employer advised the claimant to reduce this rate before the end of her probation. On February 20, the claimant had to leave work early because of child care issues. On March 13, the claimant left work early because she was ill and unable to work. As of March 6, the claimant had reduced her absenteeism rate to 18 percent.

The employer discharged the claimant on March 21, 2014, because her absenteeism rate during her 90-day probation was more than 15 percent.

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 employer established justifiable business reasons for discharging the claimant. Based on the employer's policy, the claimant violated it by having an absenteeism rate of more than 15 percent during her 90-day probation for attendance issues. The evidence shows that when the claimant was on probation, she was absent a majority of the time because either she was personally ill or her children were ill. The claimant properly notified the employer when she was ill and unable to work. The claimant established reasonable grounds for her absenteeism. She did not commit work-connected misconduct. As of March 23, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's April 9, 2014 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of March 23, 2014, 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/css