

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRYSTAL SCHELLHORN

Claimant

APPEAL NO. 06A-UI-09569-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOSTON WINDOW CLEANING INC.

Employer

**OC: 07/30/06 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 25, 2006, reference 02, fact-finder's decision that found the claimant was qualified to receive unemployment insurance benefits because the claimant was discharged from work for failing to meet the employer's expectations under nondisqualifying conditions. After hearing notices were mailed to the parties a telephone conference hearing was conducted from Des Moines, Iowa, on October 16, 2006. The claimant participated and testified on her own behalf. Representative for the employer was Aishia Jefferson. Witnesses were Mr. Ed Privg and Heather Seeda.

ISSUES:

Did the claimant voluntarily quit employment for reasons that qualify her to receive unemployment employment insurance benefits? Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds the following facts: Krystal Schellhorn was employed as a housekeeping worker for the captioned company from August 30, 2005 until August 30, 2006, when she was discharged by employer. Claimant was paid by the hour and her immediate supervisor was Ed Privg. Ms. Schellhorn was discharged from her employment with the captioned janitorial service company when an inspection of part of the premises to be cleaned by Ms. Schellhorn was found to be dusty and needed to be mopped. Ms. Schellhorn had been absent the preceding day due to illness and had notified her employer as required. On August 30, 2006, the premises were inspected shortly after the claimant began her work that day and subsequently went home ill. Ms. Schellhorn had been absent due to illness the majority of the preceding week and provided proper notification of impending absences and document verification to support her contention that it was necessary for her to be absent due to illness. When a housekeeper is absent company policy requires that other housekeepers fill in and perform the absent worker's duties. Although it appears the substitute workers had been assigned they did not perform the duties required to assist Ms. Schellhorn to maintain the level of cleaning required.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharge for intentional misconduct in connect with the employment. It does not.

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.

In this case the evidence in the record establishes that the claimant had been absent due to illness and had provided proper notification to the employer of all impending absences. The record also establishes that Ms. Schellhorn had provided doctors' statements when required to the employer. Under established company policies if the housekeeping worker is absent, the company assigns other workers to perform some or all of the absent worker's duties until they are able to return.

When Ms. Schellhorn was absent the majority of the week preceding her discharge days, the employer replaced the claimant with temporary workers. When the company inspected the premises the claimant had not had an opportunity to return or complete cleaning duties. The work observed by the employer appears to have been that of other workers. At the time of discharge the claimant was told that her discharge was related to attendance.

As the evidence does not establish that the claimant engaged in intentional disqualifying misconduct and that the claimants most recent period of absence was due to illness with proper notification, the administrative law judge must rule that the claimant's separation from employment took place under nondisqualifying conditions. The claimant attempted to perform her duties to the best of her abilities and was prevented in part by doing so by absence due to verifiable illness.

DECISION:

The Agency representative's decision dated September 25, 2006, reference 02, is affirmed. The claimant was discharged under nondisqualifying conditions. The claimant is eligible to receive unemployment insurance benefits, provided that she meets all of her other eligibility requirements.

Terence Nice
Administrative Law Judge

Decision Dated and Mailed

cs/cs