

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARI ARNOLD
Claimant

APPEAL NO: 11A-UI-04057-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES INC
Employer

OC: 02-13-11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 18, 2011, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 10, 2011. The claimant participated in the hearing. Turkessa Hill, Human Resources Generalist, participated in the hearing on behalf of the employer. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time customer service representative for APAC Customer Services from August 2, 2010 to February 14, 2011. On February 7, 2011, the claimant was not feeling well when she reported to work. She notified Operations Manager Adrienne Novitske she did not feel well and around 10:00 or 11:00 a.m. her best friend called threatening to commit suicide. She told Ms. Novitske she was going to leave because of the situation with her friend and because she was ill and Ms. Novitske stated she could leave for two hours but should call the employer and let it know what her plans were. The claimant picked her friend up and took her with her to the claimant's doctor where the claimant was diagnosed with bronchitis. Her physician wrote a doctor's note excusing her from work from February 7 to February 14, 2011 (Claimant's Exhibit A). The claimant called Ms. Novitske around 3:00 or 3:30 p.m. to say she would not be returning and had a doctor's note taking her off work until February 14, 2011, and Ms. Novitske said they would discuss the claimant's attendance when she returned. The claimant reported for work February 14, 2011, and the employer terminated her employment for failing to return to work February 7, 2011. The employer uses a no-fault attendance policy and allows employees to use eight points. When an employee reaches zero points her employment is terminated. The claimant had several health issues and was on an extended leave of absence from September 1, 2010 to October 14, 2010, as the employer tried to work with her regarding her illnesses and absences. The employer verbally warned the claimant about her attendance on more than one occasion. On December 10, 2010, the claimant received a

written warning because she had used seven of her eight allowed attendance points. On January 6, 2011, she received a final written warning because she had zero points remaining.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant did exceed the allowed number of attendance points, her last absence was due to an emergency involving her best friend but also because of an illness for which she was diagnosed with bronchitis and had a doctor's excuse. The employer agreed that most, if not all, of the claimant's previous absences were due to illness. Because of the employer's no-fault attendance policy, however, the reason for her last absence would not have mattered; she would have been terminated regardless as evidenced by the fact the employer would not accept

her doctor's excuse. Even if the sole reason for the claimant's discharge was her failure to return to work February 7, 2011, because of her friend's emergency, one unexcused absence does not constitute excessive unexcused absenteeism as defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The March 18, 2011, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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