

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATTI A PHILLIPS
Claimant

APPEAL NO. 08A-UI-08032-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC
Employer

OC: 07/20/08 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated August 25, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on September 23, 2008. The claimant participated. Participating as a witness for the claimant was David Rottzinger. The employer participated by Rick Talcott.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from February 18, 2008, until July 8, 2008, when she was discharged from employment. Ms. Phillips worked as a case picker on a full-time basis and was paid by the hour.

The claimant was discharged after she exceeded the permissible number of attendance infractions allowed under company policy. Ms. Phillips had been warned before being separated from her employment. The most recent incident that resulted in the claimant's discharge took place on July 7, 2008, when the claimant became dizzy at work and requested permission to leave work early. Permission was denied. Subsequently, the claimant was observed with her head between her knees, attempting to lessen her dizziness. At that time, the claimant was instructed to go home by her immediate supervisor and was assessed an infraction point. The following morning, the claimant was required to take her child to the emergency room due to an injury and called in to report her impending tardiness. The claimant was instructed to report for work. When she reported, she was discharged.

During the course of her employment, Ms. Phillips' attendance and punctuality did not meet the employer's standards, and the claimant had been warned prior to her discharge. The company

utilizes a “no fault” attendance system, which assesses infraction points for any type of absence or tardiness.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Phillips was discharged for misconduct in connection with the employment. It does not.

The evidence in the record establishes that the claimant’s most recent attendance infraction took place when the claimant was ill at work and instructed by her supervisor to leave. The claimant was nevertheless assessed an attendance infraction point. The following day, the claimant could not report to work due to an injury that occurred to one of her children and the claimant was required to take the child to the emergency room. Ms. Phillips called in to report her impending tardiness and was told to report to work. When she reported, she was discharged because she had exceeded the permissible number of attendance infraction points allowed in her company policy.

The Iowa Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct but also held that absence due to illness or other excusable reasons is deemed excused if the employee properly notifies the employer.

In this case, the evidence establishes the claimant’s final infractions took place when she was ill and that she properly notified the employer. Under the reasoning utilized by the Iowa Supreme Court in Higgins, absences of this nature deemed to be “excused” and cannot be used to disqualify a claimant from unemployment insurance benefits.

While the decision to terminate Ms. Phillips may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the claimant’s discharge took place under non-disqualifying conditions.

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.

DECISION:

The representative's decision dated August 25, 2008, reference 01, is affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw