

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RITA R SUMMAGE**

Claimant

**APPEAL NO. 11O-UI-06130-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APAC CUSTOMER SERVICES**

**OF IOWA**

Employer

**OC: 09/05/10**

**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

APAC Customer Services of Iowa (APAC) filed an appeal from a representative's decision dated September 29, 2010, reference 01, which held that no disqualification would be imposed regarding Rita Summage's separation from employment. After due notice was issued, a hearing was held by telephone on November 22, 2010. The hearing was recessed and reconvened on December 7, 2010. Ms. Summage participated personally. The employer participated by Turkessa Hill, Human Resources Generalist. Exhibit One was admitted on the employer's behalf.

On February 14, 2011, the administrative law judge issued a decision affirming the allowance of benefits. The employer filed a further appeal with the Employment Appeal Board. On May 6, the Employment Appeal Board remanded the matter to take additional testimony on the issue of whether Ms. Summage was discharged for a current act of misconduct. Pursuant to the remand, due notice was issued scheduling the matter for a telephone hearing on June 22, 2011. The employer participated by Turkessa Hill, Human Resources Generalist. Ms. Summage did not contact the Appeals Bureau until 1:41 p.m. on June 23. She indicated she thought the hearing was scheduled for June 23 rather than June 22. Because she did not have good cause for not participating at the scheduled time, the administrative law judge declined to reopen the hearing record.

**ISSUE:**

At issue in this matter is whether Ms. Summage 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. Summage was employed by APAC from July 6, 2009 until September 3, 2010. She worked full time as a customer sales representative. She was discharged after she falsified a document she presented to the employer.

Ms. Summage left work after approximately two hours on August 18, 2010 because her daughter was ill. She was not scheduled to work on August 19 but was scheduled to be there at 8:30 a.m. on August 20. She called to report that she would be late on August 20 and arrived at approximately 2:30 p.m. On August 21, she was asked to provide documentation that she had, in fact, been late because she was at the hospital picking up her daughter on August 20.

On August 24, Ms. Summage provided the employer a document from Genesis Medical Center regarding her daughter's discharge from the hospital. The document indicated that the child had been released to her mother at 1320 on August 20, 2010 (Exhibit 1). It appears to the administrative law judge that the document has been altered in at least three places, as alleged by the employer. The alterations are with respect to the discharge date, time, and which parent was with the child at the time of release. Ms. Summage worked on August 25, 26, 27 and 28. The employer first discussed the matter with her on September 1, at which time she acknowledged making the alterations alleged by the employer. She indicated she did so in order to avoid attendance points.

Ms. Summage was placed on investigative leave on September 1. She was notified of her discharge by telephone on September 3. The above matter was the sole reason for the discharge.

#### **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 § 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). The employer's burden included establishing that the discharge was predicated on a current act that constituted misconduct. 871 IAC 24.32(8). In the case at hand the act of misconduct occurred on August 24 when Ms. Summage presented an altered medical document. However, she was not immediately discharged. She worked four additional days before being suspended.

The employer did not begin its investigation until September 1, at least one full week after the altered doctor's statement was presented. During the interim, Ms. Summage was given no indication that the matter was being investigated or that she was being considered for discharge. Since the employer suspended her on September 1 pending an investigation, the administrative law judge must presume it had the ability to do so on August 25, 26, 27 or 28. The administrative law judge concludes that there was no good cause for the delay in either suspending, discharging, or putting Ms. Summage on notice that she was being investigated.. As such, the conduct of August 24 was no longer a current act as of the suspension date of September 1. Inasmuch as the falsified documentation was the only reason for discharge, it must be concluded that the employer has failed to establish that the discharge was prompted by a current act of misconduct. Accordingly, no disqualification is imposed.

**DECISION:**

The representative's decision dated September 29, 2010, reference 01, is hereby affirmed. Ms. Summage was discharged by APAC but a current act of misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs