

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALISHA WHITE
Claimant

APPEAL NO. 14O-UI-00620-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER
Employer

OC: 09/22/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 16, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held on November 14, 2013. Claimant participated. Employer did participate through (representative) Julie Kilgore, Vice President of Human Resources and Laura Coyle, Director of Nursing and Shelly Farrell, Human Resources Coordinator. A decision denying the claimant unemployment insurance benefits was issued on November 13, 2013. The claimant appealed to the Employment Appeal Board (EAB) who remanded for additional testimony. After due notice was issued, an additional hearing was held on March 7, 2014. The claimant participated personally and was represented by Margret E. White, Attorney at Law. Witness Sandy Doerring was subpoenaed and did participate on behalf of the claimant. The employer did participate through Laura Coyle, Director of Nursing and Shelly Farrell, Human Resources Coordinator and was represented by Stacey Codr, Attorney at Law. Claimant's exhibit A was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The findings of fact set out in 13A-UI-11919-H2 are adopted and incorporated herein as if set out fully. Additionally, Ms. Doerring took the telephone call from the claimant on September 6. Ms. Doerring made it clear that if the claimant had told her she was using FMLA time, then she would have written it down that way. The claimant did not report to Ms. Doerring on September 6 that she needed to be absent due to FMLA, the claimant simply reported she would be absent. None of the dates that claimant used FMLA were counted against her or used to make the decision to discharge her including: August 17, 19, July 17, 20, 24 and 25. The claimant had demonstrated an ability to call in and properly report when she was going to be off work using FMLA.

The claimant was absent or tardy on September 19, 2102, October 8, 2012, November 19, 2012, January 30, 2013, February 22, 2013, March 4, 2013, March 11, 2013, April 28, 2013, May 13, 2013, June 22, 2013, August 22, 2013 and August 29, 2013.

If the claimant had told Ms. Doerring on September 6 that she needed to miss work due to FMLA issues, that would have been recorded as such and the claimant would not have been discharged. The claimant never mentioned to the employer during her discharge proceedings that she was on FMLA on September 6.

REASONING AND CONCLUSIONS OF LAW:

The reasoning and conclusions of law set out in 13A-UI-11919-H2 are adopted and incorporated herein as if set out fully. Additionally, the administrative law judge finds the claimant not as a credible a witness as the employer's witness and Ms. Doerring. If the claimant had told Ms. Doerring she was using FMLA, it would have been written down as such. The claimant had ample warning that her poor attendance, aside from FMLA use was placing her job in jeopardy. The claimant was discharged for excessive unexcused absenteeism and she is disqualified from receipt of unemployment insurance benefits.

DECISION:

The October 16, 2013, (reference 01) decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are denied until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefits amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css