

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERI R PILMER
Claimant

APPEAL NO. 12A-UI-07709-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**URBANDALE COMMUNITY
SCHOOL DISTRICT**
Employer

**OC: 05/27/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Urbandale Community School District filed a timely appeal from an unemployment insurance decision dated June 18, 2012, reference 01, that allowed benefits to Jeri R. Pilmer. After due notice was issued, a telephone hearing was held July 18, 2012, with Ms. Pilmer participating. The employer provided the name and telephone number of a witness. The number was answered by a recording at the time of the hearing. The administrative law judge left instructions for the witness to call while the hearing was in progress if she wished to participate. There was no further contact from the employer.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Jeri R. Pilmer was employed as a cook by Urbandale Community School District for approximately five years prior to May 24, 2012. She was discharged because of excessive absences. Her final absence was on May 18, 2012. She obtained permission from her supervisor to leave work to consult a doctor. She returned to work with medical documentation.

REASONING AND CONCLUSIONS OF LAW:

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

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 proof. See Iowa Code section 96.6-2. As noted above, the employer did not participate. Among the elements an employer must prove is that the final incident leading directly to the discharge was a current act of misconduct. See 871 IAC 24.32(8). Although excessive unexcused absenteeism is one form of misconduct, not all absences are treated the same under the law. Absence due to a medical condition is not misconduct, provided the employee properly reports the absence to the employer. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7). The evidence in this record establishes that Ms. Pilmer's final absence cannot be considered an act of misconduct for unemployment insurance purposes. Benefits are allowed.

DECISION:

The unemployment insurance decision dated June 18, 2012, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw