

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARI A FRANZEN
Claimant

APPEAL NO. 11A-UI-09118-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MID-STEP SERVICES INC
Employer

**OC: 06/05/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated June 30, 2011, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on August 2, 2011. The claimant participated personally. The employer participated by Ms. Jan Hackett, human resource director. Claimant's Exhibit 1 was received into evidence.

ISSUES:

The issues are whether the claimant filed a timely appeal and whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Ms. Kari Franzen was employed by Mid-Step Services as a full-time residential living associate from June 7, 2010, until June 9, 2011, when she was discharged for excessive absenteeism. Ms. Franzen was paid by the hour. Her immediate supervisor was Jessica LeMoine.

Ms. Franzen was discharged after calling in absent on June 7, and June 8, 2011. Upon her return to work on June 9, 2011, Ms. Franzen provided a doctor's note for her absence on June 7, stating the claimant "needed the day off work." Because the employer requires that doctor's notes specifically state that the employee could not report to work due to illness of the employee or child, the employer did not consider the note to be sufficient and discharged Ms. Franzen from employment at that time.

Ms. Franzen had received a final warning about attendance on May 20, 2011, and had been suspended one day for excessive absenteeism as that time.

Upon reporting to work on June 9, 2011, Ms. Franzen stated to the supervisor on duty that a second, more comprehensive doctor's note would be provided. The claimant, nevertheless,

was discharged. Ms. Franzen did not file a grievance or further dispute her discharge up the chain of command, as she believed the employer's decision was final.

Ms. Franzen filed an untimely appeal in this matter due to circumstances beyond her control. The claimant's appeal that had been deposited with the U.S. Postal Service on June 30, 2011, was delayed. When the claimant was informed that her appeal had not been received, she re-filed her appeal. Subsequently, the claimant's initial appeal was delivered by the U.S. Postal Service.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds that the claimant has established that she filed her appeal in a timely manner. The next issue is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is 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 in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate,

intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

The Supreme Court of Iowa held in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984), that excessive unexcused absenteeism is a form of misconduct. The Court held that the absences must both be excessive and unexcused and that the concept included tardiness, leaving early, etc. The Court further held, however, that absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer.

In this matter, the evidence establishes that Ms. Franzen properly notified her employer of her impending absences on June 7, and June 8, 2011, and that the claimant's absences were due to illness. Upon her return, the claimant provided a doctor's note covering the first day of absence and specifically indicated to the supervisor on duty that a second doctor's note covering both days of absence with a more comprehensive medical statement would be forthcoming. The claimant nevertheless was discharged. Subsequently, the claimant's doctor provided a note verifying the claimant's need to be absent on June 7 and 8 "due to medical illness."

The question in this case is not whether the employer has a right to discharge an employee for these reasons but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate Ms. Franzen may have been a sound decision from a management viewpoint, the evidence in the record establishes the claimant's most recent absences were due to illness and were properly reported and were therefore non-disqualifying. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated June 30, 2011, reference 01, is reversed. The claimant was discharged for no disqualifying reason. 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