

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRY M SHIMKUS
Claimant

APPEAL NO. 11A-UI-07088-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**APAC CUSTOMER SERVICES OF
IOWA LLC**
Employer

**OC: 05/01/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 23, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 22, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Turkessa Hill participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer service representative from August 30, 2010, to May 2, 2011. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. The claimant had received a final written warning for excessive absenteeism on February 9, 2011, and was told that if she received one more attendance occurrence, she could be discharged. The claimant's attendance occurrences were due to her children's illnesses or times when she was ill.

On the afternoon of May 2, 2011, the claimant received a message that her grandfather was gravely ill and had been taken to a local hospital. The claimant asked her supervisor for permission to leave work. The supervisor asked her if she had any attendance points left. She told the supervisor that she didn't think she had any attendance points available. The supervisor then told her that if she left, she would be terminated. She told the supervisor that it was an emergency and she was going to leave. The supervisor then informed her that she was terminated and asked for her badge. The claimant was discharged for exceeding the attendance limit under the employer attendance policy.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides:

Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant's final absence was due to a family medical emergency and the absence was properly reported. No current act of work-connected misconduct has been established in this case.

DECISION:

The unemployment insurance decision dated May 23, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs