

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDI J ECKES
Claimant

APPEAL NO. 08A-UI-06337-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEURING PROMOTIONS INC
Employer

**OC: 05/18/08 R: 01
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Feuring Promotions, Inc. filed an appeal from a representative's decision dated June 26, 2008, reference 01, which held that no disqualification would be imposed regarding Brandi Eckes' separation from employment. After due notice was issued, a hearing was held by telephone on July 24, 2008. The employer participated by Doug Finney, Administrator. Ms. Eckes did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Eckes was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Eckes was employed by Feuring Promotions, Inc. from October of 2007 until May 23, 2008. She worked full time as an embroidery machine operator. She was discharged because of her attendance.

All of Ms. Eckes' absences were due to either her own illness or that of her child. All of her absences were properly and timely reported. She never left work early without permission. She provided a doctor's statement for some of her absences. Ms. Eckes received a written warning and was placed on probation on May 9, 2008 due to her attendance. The warning indicated she would be considered a voluntary quit if she missed any time from work during the following 180 days.

Following the warning, Ms. Eckes was next absent on May 19 when she left work early to take her child to the doctor. She provided a doctor's statement verifying the appointment. She was absent on May 20 and left work early on May 21, both absences caused by illness. Ms. Eckes worked her full shift on May 22 and was notified of her discharge on May 23. Attendance was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

The employer considers Ms. Eckes to have quit because of the provisions of the warning she received on May 9. The warning indicated that any absences during the 180-day probation would be construed as a voluntary quit. However, in the context of unemployment compensation, in order to find a voluntary quit, there must be evidence of an intention to sever the employment relationship accompanied by some overt act of carrying out that intent. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). There was no evidence that Ms. Eckes intended to sever her employment relationship with Feuring Promotions, Inc. The employer initiated the separation when it was decided that she would not be allowed to work after May 23. For the above reasons, the separation is considered a discharge.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 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). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

All of Ms. Eckes' absences were for reasonable cause, either her own illness or that of her child. Since all of the absences were properly reported to the employer, they are all excused. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. See 871 IAC 24.32(7). It is true that Ms. Eckes had been warned about her attendance. However, the fact remains that the absences that prompted her discharge were all excused absences. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated June 26, 2008, reference 01, is hereby affirmed. Ms. Eckes was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css