

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

Appeal Number: 04A-UI-03668-DWT  
OC 03/22/04 R 03  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

CAROL J ANDERSON  
2417 W – 3<sup>RD</sup>  
WATERLOO IA 50701

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

ARAMARK UNIFORM  
& CAREER APPAREL  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Aramark Uniform & Career Apparel (employer) appealed a representative's March 22, 2004 decision (reference 01) that concluded Carol J. Anderson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 22, 2004. The claimant participated in the hearing. Jon Wagner, the production manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer on September 28, 1999. She worked as a full-time production operator. The employer's written attendance policy informs employees they can be discharged if they accumulate 12 attendance occurrences within a rolling 12-month time frame. An employee receives an attendance if they are late, sick or take off time for personal business.

On December 16, 2003, the claimant received a written warning that if she had any more attendance occurrences, she would be discharged. As of December 16, 2003, the claimant had 14 occurrences. The employer gave the claimant an opportunity to correct her attendance because the employer received information her doctor was testing the claimant for a possible sleep disorder.

On January 12, 2004, the claimant left work early because of a kidney infection. She was unable to work on January 14, 2004 because of a doctor's appointment. The claimant properly notified the employer she was unable to work as scheduled these days. The claimant received an attendance occurrence for each of these days.

On February 19, 2004, the claimant properly reported she was ill and unable to work. The claimant had the flu. Even though she did not see her doctor, she called the doctor's office and obtained a statement from her doctor. When the claimant called in sick on February 19, the employer told her to wait until the employer contacted her to see if she would be able to return to work. On February 23, 2004, the employer sent the claimant a letter informing her that as of February 20, 2004, she was discharged because of her excessive absenteeism. The claimant had 17 attendance occurrences within 12 months.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew and understood her job was in jeopardy on December 16, 2003 after the employer gave her a final written warning. The claimant did not intentionally fail to work as scheduled on January 12, 14 or February 19, 2004. Instead, she was ill and unable to work these days. Based on the employer's attendance, the employer established business reasons for discharging the claimant. The claimant did not, however, commit work-connected

misconduct. Therefore, as of February 22, 2004, she is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 22, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 22, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf