

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEIDI MORLAN**  
Claimant

**APPEAL NO. 12A-UI-11941-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST PROFESSIONAL STAFFING INC**  
Employer

**OC: 07/15/12**  
**Claimant: Appellant (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Heidi Morlan, filed an appeal from a decision dated September 26, 2012, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on October 30, 2012. The claimant participated on her own behalf. The employer, Midwest Professional Staffing Inc. (Midwest), participated by Administrative Manager Karena Steir.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Heidi Morlan was employed by Midwest from August 1 until September 6, 2012 . She was assigned during this time to Mortgage Compliance. During the course of her assignment she was tardy five times, absent twice due to oversleeping and was no-call/no-show as a result. She was absent September 4 and 6, 2012, due to a medical condition which had just manifested itself. On both those occasions she became unconscious for a period of time which prevented her from calling in to report her absence.

On September 6, 2012, Mortgage Compliance requested the claimant be removed from the assignment and Staffing Manager Ashley Berch notified the claimant by phone that day.

Ms. Morlan has been discharged for absenteeism for medical reasons by other employers in the past year.

**REASONING AND CONCLUSIONS OF LAW:**

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.

871 IAC 24.32(7) provides:

(7) 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 was discharged for excessive absenteeism. Although the tardiness and the no-call/no-shows are not excused absences, properly reported absences due to illness are not considered to be misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The claimant did not properly report her final two absences but this was due to the fact she was unable to do so because she was unconscious. Such circumstances are excused under *Gimbel v. EAB*, 489 N.W.2d 36 (Iowa App. 1992).

Although Ms. Morlan's attendance was unsatisfactory on the whole, there was no current, final incident of misconduct which precipitated the discharge as required by 871 IAC 24.32(8). Disqualification may not be imposed.

The issue of whether the claimant is able and available for work in the labor market generally due to her medical condition should be remanded for determination.

**DECISION:**

The representative's decision of September 26, 2012, reference 02, is reversed. Heidi Morlan is qualified for benefits, provided she is otherwise eligible.

The issue of whether the claimant is able and available for work given her medical condition is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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