

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

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Appeal Number: 04A-UI-03625-SWT
OC 02/22/04 R 02
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, 4th 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.

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 is 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 22, 2004, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 22, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Richard Sturgeon and a witness, Jacques Serre. Penny Cutler-Bermudez participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked part-time for the employer as a resident treatment worker from November 18, 2002 to February 8, 2004. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled. The claimant had received a one-day suspension on

November 12, 2003, for being absent without proper notice on October 30, 2003. She was given a five-day suspension and final warning for excessive absenteeism on January 28, 2004, after she was absent due to illness with proper notice to the employer from December 26 to 28, 2003, and was absent from work due to an injury to her son with proper notice to the employer on January 10 and 11, 2004.

The claimant was absent from work due to illness on February 13, 14, 15, 20, 21, and 22. She called and notified the employer that she was going to be absent on February 13, 14, and 15. On February 18, 2004, the claimant went to her doctor and received a doctor's excuse releasing her to return to work on February 23, 2004. The doctor told her that if she felt better she could return to work before that date. The claimant called the employer on February 20, 2004, and left a message that she would not be at work that evening and most likely would be off work February 21 and 22 as well.

Before her work shift on February 21, the claimant had her husband go to the facility and turn in her doctor's excuse. Her husband gave it to someone at the nurse's office. The claimant did not call in on February 21 or 22, 2004, because she believed the message she left on February 20 and the doctor's excuse brought in on February 21 alerted the employer that she would not be working. The nursing supervisor, however, was unaware the message she had left on February 20 or the doctor's excuse. As a result, the claimant was considered absent without proper notice or authorization on February 21 and 22. The employer discharged the claimant on that basis on February 27, 2004.

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant and her husband testified credibly about the claimant's efforts to notify the employer that she would not be at work on February 21 and 22. Since she notified the employer that she most likely would be absent for her weekend shift and provided a doctor's excuse covering her until February 23, misconduct as defined by the unemployment insurance law has not been established in this case.

DECISION:

The unemployment insurance decision dated March 22, 2004, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/kjf