

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARRIANNA L HAIGHT
Claimant

APPEAL NO. 13A-UI-06800-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMBASSY REHAB & CARE CENTER INC
Employer

OC: 05/12/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated May 30, 2013, reference 01, which denied unemployment insurance benefits finding that the claimant as discharged from work for excessive unexcused absenteeism after being warned. After due notice was provided, a telephone hearing was held on July 11, 2013. Claimant participated. The employer participated by Ms. Tami Camberos, Dietary Supervisor.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Arrianna Haight was employed by Embassy Rehabilitation & Care Center, Inc. from August 29, 2012 until May 14, 2013 when she was discharged from exceeding the permissible number of attendance infractions after being warned. Ms. Haight was employed as a part-time dietary aide and cook and was paid by the hour.

Ms. Haight received a verbal warning for unsatisfactory attendance on January 3, 2013 and a written warning on April 2, 2013. Based upon the claimant's continued absences, Ms. Haight was further warned and issued a three-day suspension on May 7, 2013.

Although the claimant had just returned from three days of suspension for excessive absenteeism, Ms. Haight requested to have May 10 and 11 off work for personal reasons and the claimant's request was granted. Ms. Haight was expected to report for her scheduled work shift the next scheduled working day, May 12, 2013, but failed to report.

On May 12, 2013, Ms. Haight called in one and one-half hours before the beginning of her work shift from Omaha, Nebraska. The claimant indicated at that time that she was being held up due to traffic and would be unable to return from being out of town in sufficient time to report for her scheduled work.

Because the employer had repeatedly counseled Ms. Haight about her unsatisfactory attendance and because the claimant had requested and had been granted two days off work immediately following her days of suspension, the claimant's supervisor, Ms. Camberos was upset and using inappropriate language expressing her dissatisfaction with the fact that the claimant was again calling off work after being repeatedly warned, counseled and suspended. The claimant was discharged at that time for unsatisfactory attendance after being warned.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

No aspect of the contract of employment is more basic than the right of the employer to expect that its employees will appear for work on the hour and day agreed upon. Recurrent failure to honor that obligation evinces a substantial disregard for the employer's interests and thus may justify a finding of misconduct in connection with the work.

The Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of job misconduct. The Court held that the absences must be both excessive and unexcused and that the concept includes tardiness, leaving early, etcetera. The Court further held, however, that absence due to matters of "personal responsibility", e.g. transportation problems or oversleeping are considered unexcused. See Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984).

The evidence in the record establishes that Ms. Haight had been excessively absent during the short period of her employment with this employer and that only approximately three of the claimant's numerous absences were due to illness.

The final incident that caused the claimant's discharge took place when the claimant was unable to report for scheduled work due to a transportation issue. Although the claimant knew that her employment was in jeopardy due to excessive absenteeism, she nonetheless called off work due to making inadequate transportation arrangements that would have enabled the claimant to return for scheduled work on May 12, 2013. For these reasons the administrative law judge concludes that the employer has sustained its burden of proof in this matter. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated May 30, 2013, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css