

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LATOYA FAULKNER**  
Claimant

**APPEAL NO. 11A-UI-15508-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GREAT RIVER MEDICAL CENTER HUMAN**  
Employer

**OC: 11/06/11**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated December 1, 2011, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on January 4, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with witness, Maria Faulkner. Christy Ford participated in the hearing on behalf of the employer with a witness, Ann Hannum.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as a certified nursing assistant and universal worker from October 18, 2010, to November 8, 2011. She was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled.

The claimant was absent from work on May 2, May 30, July 18, August 5, September 9, October 27, October 31, and November 4. She was late on May 16, May 23, June 3, June 11, June 15, June 24, July 3, July 7, September 6, September 11, and October 8.

The claimant received a written warning for attendance on July 21 and a final written warning on September 13, 2011.

The claimant's absences were due to her own or a family member's illness. The absence on October 31 was due to her son being hospitalized due to a serious illness. The claimant's absence on November 4 was due to her mother who is disabled falling and injuring herself before the claimant left for work. Her mother was her babysitter. She stayed with her mother and cared for her and her child. The claimant properly notified the employer regarding her absences.

The claimant relies on cabs to get to work. The claimant had no problem with reporting to work on time when she had a set scheduled starting at 6:30 a.m., but problems with tardiness arose in May 2011 after she was moved to a rotating schedule with different start times, which created problems for the claimant arranging a cab to get her to work on time.

**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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides: "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." 871 IAC 24.32(8) provides: "While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act."

The current acts in this case must be the final absences on October 31 and November 4, 2011. In both instances, the claimant's absences were for legitimate reasons and were properly reported. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established.

**DECISION:**

The unemployment insurance decision dated December 1, 2011, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css