

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODI M COOPER
Claimant

APPEAL NO. 11A-UI-07348-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

URBANDALE HEALTH CARE CENTER
Employer

OC: 04/10/11
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jodi Cooper filed an appeal from a representative's decision dated May 23, 2011, reference 05, which denied benefits based on her separation from Urbandale Health Care Center (UHCC). After due notice was issued, a hearing was held by telephone on June 29, 2011. Ms. Cooper participated personally. The employer participated by Dawn Livingston, Human Resources Director, and Cheri Price, Director of Nursing. Exhibits One through Five were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Cooper was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Cooper was employed by UHCC from March 17 until September 30, 2010. She worked full time as a certified nursing assistant. She was discharged because of her attendance.

Ms. Cooper was absent without calling in on March 21. She was absent for unknown reasons on March 23, March 25, and April 5. She was late reporting to work on May 9, June 5, and June 14 because she did not have transportation. Ms. Cooper received a verbal warning on September 15 after she called in absent on September 9. She signed a written warning on September 16 that made reference to absences on July 11 and 12. The warning was signed by the director of nursing on July 13 but was not presented to Ms. Cooper at that time.

The decision to discharge was based on Ms. Cooper's absence from work on September 30. She was scheduled to work from 2:00 until 10:00 p.m. At approximately 2:30 p.m., she asked for permission to leave to take care of a personal issue. Her boyfriend was throwing her personal possessions out of the home and onto the front yard. She was told she could take 45 minutes to deal with the matter and then return to work. At approximately 3:30 p.m.,

Ms. Cooper notified the employer that she could not return to work that day. As a result, she was discharged.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

Ms. Cooper only worked for UHCC for a little over six months. During that time, she had at least five periods of unexcused absenteeism. Her absence of March 21 is unexcused as it was not properly reported and the evidence did not establish any reasonable cause for the failure to call in. The tardiness of May 9, June 5, and June 14 is unexcused as it was due to transportation issues. Absences caused by matters of purely personal responsibility, such as transportation, are not excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The final absence from work on September 30 was likewise due to a personal matter.

Ms. Cooper had received two warnings about her attendance. Although there was a delay in her receipt of the warning dated July 13, it was given to her before the final absence that prompted the discharge. She was clearly on notice that her attendance was jeopardizing her continued employment. The administrative law judge considers five periods of unexcused absenteeism during six months is excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. It is, therefore, misconduct within the meaning of the law. Accordingly, benefits are denied.

DECISION:

The representative's decision dated May 23, 2011, reference 05, is hereby affirmed. Ms. Cooper was discharged by UHCC for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css