

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NANCY J COLLETTE
Claimant

APPEAL NO. 13A-UI-07836-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

OC: 06/09/13
Claimant: Respondent (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Fareway, filed an appeal from a decision dated June 26, 2013, reference 01. The decision allowed benefits to the claimant, Nancy Collette. After due notice was issued, a hearing was held by telephone conference call on August 12, 2013.

The claimant provided a telephone number to the Appeals Section. That number was dialed at 12:59 p.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless she contacted the Appeals Section prior to the close of the record. By the time the record was closed at 1:10 p.m. the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The employer participated by Human Resources Generalist Theresa McLaughlin.

ISSUE:

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

FINDINGS OF FACT:

Nancy Collette was employed by Fareway from September 10, 2001 until June 5, 2013 as a full-time grocery clerk. She went on a medical leave of absence March 6, 2013. The information provided by her physician indicated she could return to work on April 30, 2013. That time was extended through several more doctor's notes to May 28, 2013. She did not return to work.

On May 29, 2013, the employer received a new application for short-term disability (STD) for back and leg pain. This was a separate medical issue than that for which she had been granted the initial leave of absence. That request was denied because policy requires the employee to return to active duty for at least one day between claims. Ms. Collette knew the second claim had been denied, and the third-party leave administrator discussed her option to have the initial leave of absence extended with a new doctor's note.

The claimant did not return to work or provide a new physician's note to extend the initial leave. She was no-call/no-show to work and was finally notified by phone of her discharge by Human Resources Generalist Theresa McLaughlin on June 5, 2013.

Nancy Collette filed a claim for unemployment benefits with an effective date of June 9, 2013. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

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, unexcused absenteeism. The employer and the employer's third party administrator worked with her throughout the leave period, discussing her options with her and providing her with necessary information. She was given additional time to

extend her initial leave of absence but did not do so, nor did she contact the employer on a daily basis to indicate she would be absent.

The unreported absences, even if due to illness, are considered unexcused. She was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

DECISION:

The representative's decision of June 26, 2013, reference 01, is reversed. Nancy Collette is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css