

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

SHANNON M ZUBROD
PO BOX 581
WILLIAMSBURG IA 52361

ACCESS DIRECT TELEMARKETING INC
C/o JOHNSON & ASSOCIATES
PO BOX 6007
OMAHA NE 68106-0007

Appeal Number: 04A-UI-01851-H
OC: 01-11-04 R: 3
Claimant: Appellant (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:

Shannon Zubrod filed an appeal from a decision dated February 10, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held in Cedar Rapids, Iowa, on May 17, 2004. The claimant participated on her own behalf and with a witness, Steven Zubrod. Access Direct participated by Program Manager Andrew Alexander.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Shannon Zubrod was employed by Access Direct from September 16, 2002 until January 14, 2004. She was a part-time telephone sales representative. In the course of her employment Ms. Zubrod had received warnings regarding her attendance. She received one on September 30, November 6, December 5, and December 9, 2003. She received a final written warning and was notified her job was in jeopardy as she accumulated more than four points. At the final written warning, she was at three and one-half points.

Ms. Zubrod was absent from work on January 12, January 13, January 14, and January 15, 2004. On January 12 and January 13 she did not come in to work because her children were ill and she could not take them to the babysitter. However, the claimant elected not to have her husband stay home from his job and care for the children even though she knew her job was in jeopardy.

She was also absent on January 14 and January 15 due to personal illness which she reported to Program Manager Andrew Alexander. However, she had already accumulated more than the required number of points for discharge as of those two absences.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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).

Iowa Code Section 96.5-2-c 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:

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

The claimant was advised her job was in jeopardy as a result of her absenteeism. She was absent two more times January 12 and January 13, 2004, due to lack of childcare. While the childcare provider would not take sick children, the claimant always had the option of having her husband stay home and take care of their children, as there was no evidence his job was in jeopardy as a result of absenteeism as hers was. Her decision to stay home with the children rather than have her husband take care of them, so that she could preserve her job, must be considered an unexcused absence. Alternative childcare was available to her and she elected not to take advantage of it. Excessive unexcused absenteeism is conduct not in the best interest of the employer and the claimant is disqualified.

DECISION:

The representative's decision of February 10, 2004, reference 01, is affirmed. Shannon Zubrod is disqualified and benefits are withheld until she has requalified by earning ten times her weekly benefit amount, provided she is otherwise eligible.

tjc/kjf