IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DEBRA K HAYNES Claimant	**APPEAL NO. 09A-UI-04311-S2T**
	ADMINISTRATIVE LAW JUDGE DECISION
WINEGARD COMPANY Employer	
	OC: 02/15/09 **Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Winegard Company (employer) appealed a representative's March 12, 2009 decision (reference 01) that concluded Debra Haynes (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 13, 2009. The claimant participated personally. The employer was represented by Cheryl Roethemeier, Hearings Representative participated by Carl Ingwersen, Factory Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 30, 2002, as a full-time assembler. The employer had a handbook but the claimant did not sign for it. The claimant was absent due to properly reported illness on February 25, June 23, July 8 and October 27, 2008. The employer issued the claimant written warnings on or about July 15 and November 11, 2008, for unexcused absenteeism. The employer notified the claimant that further infractions could result in termination from employment.

On February 16, 2009, the claimant properly reported that she could not work because her 13-year- old child was vomiting and had diarrhea from the influenza. On February 18, 2009, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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(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.

871 IAC 24.32(8) provides:

> (8) Past acts of misconduct. 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 employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). In light of good faith effort, absences due to inability to obtain child care for sick infant, although excessive, did not constitute misconduct. McCourtney v. Imprimis Technology, Inc., 465 N.W.2d 721 (Minn. App. 1991). The claimant’s previous absences do not amount to job misconduct because they were due to illness and properly reported.

The claimant’s final absence was due to her lack of child care, a personal issue. The child care was for a sick 13-year-old, not an infant. The claimant’s absence due to lack of child care for a sick 13-year-old arises from a purely personal responsibility. Therefore, the claimant’s final absence is not excusable. One unexcused absence in seven years is not excessive. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

DECISION:

The representative's March 12, 2009 decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs