

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATASHA A BROOKS
Claimant

APPEAL NO: 10A-UI-12928-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOWROYD WRIGHT EMPL AGENCY INC
Employer

**OC: 01/17/10
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's September 7, 2010 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. Kassandra Gearhart, an account executive, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge concludes that based on this employment separation the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The employer assigned the claimant to a job on October 6, 2008. The employer gave the claimant a written warning for attendance issues on February 20, 2009. After receiving the written warning the claimant was absent from work on March 16, 27, 30, 31, April 16, 17 and 22. Although the claimant had been told to contact the employer when she was unable to work, the claimant only contacted the client when she was unable to work. When the claimant did not call the employer, the employer did not know about her absences until the client reported more the claimant's attendance issues. As a result, the employer did not know why the claimant was absent after February 20, 2009.

The employer gave the claimant a second written warning for continuing attendance issues on April 24, 2009. On April 27, before the claimant was scheduled to work, the client told the employer to end the claimant's work assignment effective immediately. The employer understood the assignment ended for continuing attendance issues, but did not know if the claimant had any further attendance issues after the April 24, 2009 written warning. After the claimant arrived at work, the employer informed her that her job assignment was over.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

Since the client knew about the April 24 written warning for attendance issues, the employer assumed the claimant had another attendance issue after she received the April 24 warning. The facts do not establish another attendance issue occurred after the claimant received the April 24 written warning. Even though the claimant did not call the employer to report why she was unable to work, the employer did not find out from the client what reason or reasons the claimant gave when she called to report she was unable to work as scheduled. Based on the evidence during the hearing, the employer did not establish that the claimant committed work-connected misconduct. Therefore, the claimant is qualified to receive benefits based on the reasons for this April 27, 2009 employment separation.

DECISION:

The representative's September 7, 2010 determination (reference 02) is affirmed. The employer ended the claimant's assignment on April 27, 2009, but did not establish that she committed work-connected misconduct. Based on this employment separation, the claimant is qualified to receive benefits as of January 17, 2010, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css