

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER L ROTRUCK**  
Claimant

**APPEAL NO. 11A-UI-03375-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MID-STEP SERVICES INC**  
Employer

**OC: 02/06/11  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's March 14, 2011 determination (reference 01) 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 participated in the hearing. Jon Hackett, the human resource director, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer in August 2000. The claimant worked as a full-time residential direct care provider. The union contract allows employees to have three unexcused absences in a six-month rolling calendar. If an employee has more than three unexcused absences in six months, the employer's progressive disciplinary procedure starts. The progressive disciplinary procedure starts with a verbal warning, a written warning, a suspension and then termination. The employer may also require an employee to provide a doctor's statement verifying the employee was ill and unable to work.

On December 6, 2010, the employer suspended the claimant for excessive absenteeism. The written warning the claimant received when she was suspended told her that if she was unable to work because she was ill, she was to bring the employer a doctor's statement the day she reported back to work. As a result of her absences, the employer started requiring the claimant to bring in a doctor's note when she called in ill in early September 2010.

Just before the claimant was scheduled to work on February 9, 2011, she notified the employer she was ill and unable to work. The claimant had a migraine and was unable to work. The last several months of her employment, the claimant experienced migraines. As of December 6, 2010, she had five absences in the last six months. Between December 6, 2010, and

February 9, 2011, two of the claimant's absences rolled off. When the claimant reported to work on February 10, she did not have a doctor's statement to verify she was unable to work as scheduled the day before. The claimant, however, indicated she could get a doctor's statement for her February 9 absence. The claimant assumed she did not need a doctor's note since the February 9 absence would be her fourth absence in six months. On February 11, the claimant's treating physician for her migraines, gave her a doctor's statement for her February 9 absence. On February 11, the employer discharged the claimant for excessive unexcused absenteeism.

**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 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).

The claimant knew her job was in jeopardy in early December 2010 when the employer suspended her for excessive absenteeism. Unfortunately, the claimant had been experiencing migraines for several months and did not know when she would get a migraine. The claimant did not have any attendance issues after her early December suspension until February 9, 2011, when she notified the employer shortly before her shift started to report she was unable to work that day. The claimant had a migraine and could not work. Even though in the past the claimant was not required to provide a doctor's statement when she had four absences, she used poor judgment when she failed to get a doctor's statement on February 9 to bring to work the next day. Her failure to bring a doctor's statement on February 10 does not rise to the level of work-connected misconduct when she was unable to work the day before because she was ill. The employer established business reasons for discharging the claimant, but she did not commit work-connected misconduct. As of February 6, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's March 14, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of February 6, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs