

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAQRUSHIA T MELVAI
Claimant

APPEAL NO. 10A-UI-08449-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

OC: 04/18/10
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's June 1, 2010 decision (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 non-disqualifying reasons. A telephone hearing was held on July 29, 2010. The claimant did not respond to the hearing notice or participate in the hearing. Karen Malloy, the human resource business partner, and Roxanne Pedder, the unit housing director, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working on March 26, 2009. She worked as a part-time patient care technician. During orientation, new employees learn that if probationary employees accumulate five or more attendance occurrences in the first six months of employment, they will be discharged. Also, five tardies equal one attendance occurrence.

During her employment, the claimant was absent on June 5 and 10. On July 10 she did not work a majority of her shift. The claimant was late for work on May 31, June 8, July 10, 17, and 31, August 2, 3, 10, 12, and 14. As a result of failing to meet the employer's attendance policy, the employer discharged the claimant on August 17, 2009. Pedder did not realize the claimant had been late for work five days in August until she reviewed timecards on August 17, 2009.

The claimant established a claim for benefits during the week of April 18, 2010. She has filed and received benefits since April 18, 2010.

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).

Based on the evidence presented during the hearing, the claimant knew or should have known the employer would consider her late if she punched in a minute late. In the health care profession, it is imperative employees report to work on time to provide quality care to the patients. The frequency in which the claimant reported work late, five days from August 2 through 14, shows an intentional and substantial disregard of the employer's interest. The employer discharged the claimant for reasons constituting work-connected misconduct. As of April 18, 2010, the claimant is not qualified to receive benefits.

The issue of overpayment or whether she is eligible for a waiver of any overpayment will be remanded to the Claims Section.

DECISION:

The representative's June 1, 2010 decision (reference 01) is reversed. The employer discharged the claimant for excessive absenteeism, which in this case constitutes work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 18, 2010. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account is exempt from charge. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is Remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw