

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHANIE M PETERSON**  
Claimant

**APPEAL NO. 09A-UI-07824-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STATE SAVINGS BANK - ADP**  
Employer

**Original Claim: 04/19/09  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism  
871 IAC 24.32(8) – Final Act of Misconduct

**STATEMENT OF THE CASE:**

State Savings Bank filed a timely appeal from an unemployment insurance decision dated May 19, 2009, reference 01, that allowed benefits to Stephanie M. Peterson. After due notice was issued, a telephone hearing was held June 16, 2009, with Ms. Peterson participating. Operations Manager Carrie Wheeler participated for the employer.

**ISSUE:**

Was the claimant discharged for a final, current act of misconduct?

**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: Stephanie M. Peterson was employed by State Savings Bank from October 1, 2008 until she was discharged April 17, 2009. She last worked as a customer service senior teller. The final incident leading to her discharge was her absence on April 17, 2009. Ms. Peterson had called the bank in accordance with practice to advise that she would be late arriving because her seven-year-old child had head lice. Ms. Peterson was discharged because of this absence and because of previous absences.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does not.

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.

Iowa Code section 96.5-2-b 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:

- b. If gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). While excessive unexcused absenteeism is misconduct, absence due to medical conditions properly reported to the employer cannot be held against an employee for unemployment insurance purposes. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7).

The final incident leading to the discharge was Ms. Peterson's absence due to her seven-year-old child's medical condition. Since this absence was properly reported to the employer, the administrative law judge concludes that it does not constitute a final act of misconduct. No disqualification may be imposed.

#### **DECISION:**

The unemployment insurance decision dated May 19, 2009, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

srs/kjw