

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA R WILDER
Claimant

APPEAL NO. 13A-UI-00587-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABM JANITORIAL SERVICES NORTH
Employer

OC: 12/16/12
Claimant: Appellant (2)

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant, Laura Wilder, filed an appeal from a decision dated January 11, 2013, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 19, 2013. The claimant participated on her own behalf. The employer, ABM Janitorial Services North (ABM), did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Laura Wilder was employed by ABM from May 29, 2012 until December 21, 2012 as a full-time general cleaner. She missed one day in June and another day in July 2012 because her mother was in emergency surgery and these were properly reported. After that Ms. Wilder missed December 19 and 20, 2012, due to illness. She went to a doctor who apparently gave her a note returning her to work but nothing excusing her from work for those two days. The claimant did not call in to report her absences.

On December 21, 2012, Ms. Wilder called and spoke with John, the director. She asked if she still had a job because she had already missed five days. It was her understanding that missing five days was grounds for discharge. John told her she was fired.

REASONING AND CONCLUSIONS OF LAW:

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

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.

The claimant was discharged for absenteeism. She missed five days of work during seven months of employment, all due to personal illness or family emergency. All but two were properly reported and she did have a doctor's note regarding the two unreported.

The administrative law judge cannot consider two no-call/no-show to be excessive. The employer did not meet its burden of proof to establish misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of January 11, 2013, reference 01, is reversed. Laura Wilder is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs