

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MACKENZIE E SCHAEFER

Claimant

APPEAL NO. 14A-UI-10969-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST BASEMENT SYSTEMS INC

Employer

OC: 09/28/14

Claimant: Respondent (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 20, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 10, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Fred Hoffman participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer service representative from May 20, 2014, to August 29, 2014. She was informed and understood that under the employer's work rules, employees were required to notify the employer an hour before the start of the shift if they were not able to work as scheduled. The claimant was pregnant and her due date was August 19. Fred Hoffman is the office manager.

The claimant received a warning on August 2, 2014, because she was four minutes late on July 28, she left work early due to illness on July 29, was late due to a scheduled doctor's appointment on July 30, and was late for work on August 1 and 2. After receiving the warning, she was absent due illness on August 4, 11, 13, and August 18 and 19. She had doctor's notes for her absences on August 4, 11, and 13.

She received a final warning about attendance on August 25, 2014, because she was late for work that day and the prior instances of absenteeism. She asked Hoffman at that time to go on maternity leave because she was having some pregnancy-related problems and she was beyond her due date. She was denied maternity leave and was told that she would have to wait until some new employees were trained.

On August 27, 2014, the claimant was ill. She did not call to notify the employer of her absence. The claimant returned to work on August 28 and worked her shift. She reported to work as scheduled on August 29 and was discharged on that date for excessive absenteeism.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. The claimant has not filed any weekly claims for benefits.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "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." 871 IAC 24.32(7).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the employer's testimony that the claimant missed work without notice on August 27. Based her attendance history and prior warnings, excessive unexcused absenteeism has been shown in this case.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account will not be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated October 20, 2014, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css