

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA J FERRELL
Claimant

APPEAL NO. 12A-UI-12169-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 05/02/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 4, 2012, reference 02, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on November 5, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with witnesses, Beau Simpson and Emily Patterson. No one 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 certified nursing assistant from April 6, 2012, to September 17, 2012.

The claimant was absent four days during her employment. She was absent two days in July and was placed on probation for two months due to the absences. The absences were due to illness and were properly reported. She was also absent from work one day in August due to illness. That absence was also properly reported.

The claimant's final absence was on September 13. She was absent due to illness and called in properly. She brought in a doctor's statement for September 13 excusing her from work when she reported for her next shift on September 15. She worked on September 15 and 16 and was discharged on September 17.

The employer discharged the claimant on September 17, 2012, due to attendance and an allegation that she had told a resident that she could not talk to the resident because she would be fired. This allegation was untrue, and the claimant never made such a statement.

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.

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).

871 IAC 24.32(7) provides:

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.

No willful and substantial misconduct has been proven in this case. The claimant is qualified for benefits.

DECISION:

The unemployment insurance decision dated October 4, 2012, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs