

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**AMANDA M GOFF
8602 WESTOWN PKWY
WEST DES MOINES IA 50266**

**LUTHER CARE SERVICES/
HOMES FOR THE AGING
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-01143-DWT
OC 12/21/03 R 02
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Luther Care Services/Homes for the Aging (employer) appealed a representative's January 27, 2004 decision (reference 03) that concluded Amanda M. Goff (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer discharged the claimant for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 24, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Doretha Washington, a representative with TALX UCM Services, Inc., represented the employer. Candy Plew and Dot Donaldson were present as witnesses for the employer. During the hearing, Employer's Exhibits One through Four were offered and admitted as evidence. 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 for the employer on March 28, 2002. She worked as a part-time certified nursing assistant on the weekends.

On August 14, 2003, the employer gave the claimant a written/verbal warning for attendance problems. After the claimant had been absent on June 9 and late for work on May 4, July 27 and August 2 the employer gave her the August 14 warning. On August 14, the claimant had accumulated more than two attendance points.

The claimant did not have another attendance problem until October 14, 2003. The claimant had someone notify the employer the evening of October 13 that she was unable to work the next day because she was ill.

On October 15, the employer discharged the claimant because she had not gone to a doctor to verify she had been ill and unable to work. If an employee provides a doctor's statement, the employer only assesses a half point instead of a whole point. The employer discharged the claimant for excessive absenteeism.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(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). The law also provides that while past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct

cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The evidence indicates the claimant was absent from work a number of times prior to August 14, 2003. After the employer gave the claimant the August 14 written/verbal warning, she did not have an attendance problem until October 14, when she did not work as scheduled. The claimant did not work this day because she was ill. The claimant had someone on her behalf notify the employer the night before that she was ill and unable to work on October 14. The claimant's failure to go to a doctor to get a statement verifying she had the flu may have prevented the employer from discharging the claimant on October 15, but does not establish that the claimant intentionally and substantially disregarded the employer's interests by not working when she was ill.

The employer established business reasons for discharging the claimant because of her absenteeism history. The current act for which the employer discharged the claimant does not constitute work-connected misconduct. Therefore, as of December 21, 2003, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 27, 2004 decision (reference 03) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of December 21, 2003, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b