

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA D HALL

Claimant

APPEAL NO. 09A-UI-03424-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

OC: 02/08/09

Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The University of Iowa filed a timely appeal from an unemployment insurance decision dated February 27, 2009, reference 01, that allowed benefits to Rebecca D. Hall. After due notice was issued, a telephone hearing was held on March 19, 2009 with Ms. Hall participating. Facilities Services Coordinator Anita Cavanaugh and Facilities Services Manager Bill Millard participated for the employer. Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

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: Rebecca D. Hall was employed by The University of Iowa from August 23, 2004 until she was discharged November 18, 2008. She last worked as a custodian. Ms. Hall had been absent for medical reasons from October 24 through November 5, 2008. Her supervisor, Anita Cavanaugh, told Ms. Hall that she could return to work but must have a doctor's release. Ms. Hall was sent home on November 6, 2008 because she reported to work without a medical release. Ms. Hall did not contact the University thereafter. On or about November 3, 2008 the University sent FMLA papers to Ms. Hall. After waiting two weeks but getting no response, the termination from employment was processed on November 18, 2008. Ms. Hall has received unemployment insurance benefits since filing a claim effective February 8, 2009.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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.

Although excessive unexcused absenteeism is misconduct, absence due to medical conditions is not held against an employee for unemployment insurance purposes provided the employee properly reports the absences to the employer. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7). The evidence in the record persuades the administrative law judge that Ms. Hall's absences were because of a medical condition. Nevertheless, the evidence also shows that Ms. Hall failed to contact the University or to respond to the FMLA documents sent to her after November 6, 2008. Under these circumstances, the absences are considered unexcused. Benefits must be withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this states pursuant to section 602.10101.

The question of whether Ms. Hall must repay unemployment insurance benefits already received is remanded to the Unemployment Services Division.

DECISION:

The unemployment insurance decision dated February 27, 2009, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The question of whether she must repay the benefits she has already received is remanded to the Unemployment Insurance Services Division.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

css/css