

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATIE M HUGHES**

Claimant

**APPEAL NO. 10A-UI-03857-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERISERVE INTERNATIONAL INC**

Employer

**Original Claim: 02/14/10  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 8, 2010 (reference 01) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 27, 2010. Claimant participated. Employer participated through Director Alan Blakestad, Coordinator of “Dayhab” Center Amber Mignosa, and Client Service Coordinator Becky Eckert.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a client services representative and was separated from employment on February 11, 2010. She reported to work on February 10 after having vomited at home and during a visit to a client home. She began working on site but still felt ill and reported such to Eckert and Mignosa at 9:30 a.m. When Eckert reported to claimant’s room at 10 a.m., she believed Eckert was taking over her shift duties as she had in the past and left her med box key attached to her identification badge as she had in the past for shift replacements. Had she stayed, the schedule called for going to the YMCA at 10:15 a.m. for two hours. Neither Eckert nor Mignosa told her she could not leave, that she must wait longer to leave, or that leaving would jeopardize her job. Employer requires two-hour notice for an absence from a shift in order to find a replacement. When claimant reported for work the following day, she was discharged. A year earlier when she was feeling ill, Mignosa told her to leave immediately and did not make her wait.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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(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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct, since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. In the case of an illness, it would seem reasonable that employer would not want an employee to report to work if they are at risk of infecting other employees or clients. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. The inability to afford a medical appointment because of lack of health insurance excused the failure to provide a medical excuse or release. Because the final absence for which she was discharged was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

#### **DECISION:**

The March 8, 2010 (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw