

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALYCIA A PRUITT
Claimant

APPEAL NO. 08A-UI-0U110-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS SERVICES INC
Employer

**OC: 07/13/08 R: 03
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Heartland Express, filed an appeal from a decision dated August 4, 2008, reference 01. The decision allowed benefits to the claimant, Alycia Pruitt. After due notice was issued a hearing was held by telephone conference call on August 20, 2008. The claimant participated on her own behalf. The employer participated by Human Resources Generalist Lea Peters and Customer Service Supervisor Scott Peters. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Alycia Pruitt was employed by Heartland Express from August 6, 2007 until July 12, 2008 as a full-time customer service manager. During the course of her employment she received several verbal warnings regarding her chronic tardiness to work. On March 14, 2008, she received a written warning and one-day suspension for continued tardiness and was warned her job could be in jeopardy if the problem was not corrected.

After the final warning the claimant did improve her performance and did not miss any more work until July 11, 2008. Mr. Peters agreed to let Ms. Pruitt leave early on July 10, 2008, to attend a sporting event in Chicago, Illinois. She was to return to work at her regularly scheduled time on July 11, 2008, but called the supervisor 30 minutes before her shift was to start to say she would be absent due to illness. Mr. Peters expressed some doubt and disappointment at her failure to come to work and when she returned on July 12, 2008, he notified her she was discharged.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

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.

The administrative law judge can fully appreciate the employer's suspicions that the claimant was not, in fact ill on July 11, 2008. It was highly unlikely she would be suddenly taken ill on the very day she was to return to work after a trip out of town. The employer had facilitated this trip with the expectation she would return as scheduled. However, the employer did acknowledge the claimant had made some comments prior to leaving about not feeling well all week.

In the absence of more definite evidence Ms. Pruitt was not, in fact, ill, the final absence must be considered a properly reported illness. A properly reported illness cannot be considered misconduct as it is not volitional. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Without a current, final act of misconduct as required by 871 IAC 24.32(8), disqualification may not be imposed.

DECISION:

The representative's decision of August 4, 2008, reference 01, is affirmed. Alycia Pruitt is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css