

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**CAMIA S CURRY**  
Claimant

**APPEAL NO. 18A-UI-11621-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KUM & GO LC**  
Employer

**OC: 11/04/18  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

Kum & Go LC, the employer, filed a timely appeal from a representative's unemployment insurance decision dated November 20, 2018, reference 01, which allowed unemployment insurance benefits, finding the claimant was dismissed from work on October 17, 2018 for excessive absences, but finding that the absences were due to illness and properly reported. After due notice was provided, a telephone hearing was held on December 14, 2018. Claimant participated. The employer participated by Ms. Connie McFarland, General Manager.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Camia Curry was employed by Kum & Go LC most recently from June 20, 2018 until October 6, 2018, when she was discharged from employment. Ms. Curry was employed as a full-time sales associate and was paid by the hour. Her immediate supervisor was Ms. Connie McFarland.

Ms. Curry was discharged from her employment with Kum & Go LC based upon the employer's belief that she was excessively absent and failed to properly notify the employer of her last absences as required by policy. Ms. Curry last reported for work on September 25, 2018. On October 1, 2018, Ms. Curry was involved in an automobile accident while returning from an out-of-town trip with her daughter. Ms. Curry and her daughter were both hospitalized in a different state. Ms. Curry's automobile was demolished. Because Ms. Curry was hospitalized, injured, and unable to work, she asked her mother to notify the employer of her medical situation and the reasons why she could not report to work. On October 1, 2018, the claimant's mother contacted the Kum & Go LC store where Ms. Curry was employed. After explaining why the claimant was unable to report for work and the fact that she was hospitalized, the person Ms. Curry's mother had called indicated, "okay".

Ms. Curry remained hospitalized and unable to make long distance calls from the hospital in a different state. She did not have use of her cell phone. She believed her mother's notice to the company was satisfactory. After she was released from the hospital on October 6, 2018,

Ms. Curry called her employer, explaining that she was in a car accident, was injured, and unable to make any calls to the employer. Ms. Curry also had a doctor's note requiring her to remain away from work until October 9, 2018.

The employer considered the fact that Ms. Curry was absent from work on 17 occasions during her most recent 80 days of employment and concluded that it would be in the best interest of the employer to separate Ms. Curry from her employment. The employer also considered the fact that they had not received a call from Ms. Curry each day during her most recent period of absence.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not. Benefits are allowed.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The Supreme Court of the State of Iowa in the case of *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984) held an excessive unexcused absenteeism is a form of job misconduct. The court held that the absences must both be excessive and unexcused and that the concept includes tardiness, leaving early, etc. The court further held that absence due to illness is deemed excused if the employee properly notifies the employer. In the case of *Roberts v. IDJS*, 356 N.W.2d 218 (Iowa, 1984) the court held that absences that are unreported due to the nature of the reason for the absence are deemed excused. See also *Gimbel v. Employment Appeal Board*, 489 N.W.2d (Iowa Ct. of Appeals 1992).

In the case at hand, the evidence in the record establishes that the majority of the claimant's absences were due to illness and properly reported. The claimant's final absences from work were due to injuries sustained in a serious motor vehicle accident. The claimant was unable to provide notice of her inability to report to work each day because she was seriously injured, hospitalized in a different state, and unable to make long distance calls. The claimant attempted, to the best of her ability, to notify the employer via her mother. The claimant also had a doctor's note verifying that she could not report for scheduled work hours for medical reasons.

Having considered all the evidence in the record, the administrative law judge concludes that the claimant was discharged for no disqualifying reasons. Unemployment insurance benefits are allowed.

**DECISION:**

The representative's unemployment insurance decision dated November 20, 2018, reference 01, is affirmed. Claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

---

Terry P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

rvs/rvs