

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA M GILLELAND
Claimant

APPEAL NO. 12A-UI-07788-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC
Employer

**OC: 05/27/12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 19, 2012, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on July 25, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Wendy Mesenbrink participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked full-time for the employer as an imaging specialist on an assignment at Wells Fargo from November 28, 2011, to May 30, 2012.

The claimant had 20 absences due to legitimate illness through May 18, 2012. She properly informed the employer about each absence. Near the end of May, Wells Fargo informed the employer that it wanted her removed from the assignment due to excessive absences.

On May 30, 2012, the employer's customer service supervisor, Wendy Mesenbrink, contacted the claimant and informed her that she was being removed from her assignment and terminated by the employer due to excessive absences.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. The claimant did not quit and since she was discharged from employment, not just removed from an assignment, she had no obligation to seek another assignment from the employer.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides:

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 evidence shows that all of the claimant's absences were due to legitimate illness and were properly reported. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated June 19, 2012, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs