

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA M CHILDS
Claimant

APPEAL NO. 13A-UI-00794-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 12/09/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 16, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 18, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Bruce Burgess participated in the hearing on behalf of the employer with witnesses, Tina Weston, Brian Bisbee, and Ashley Vannausdle. Exhibits One through Three were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part time as a checker from April 20, 2009, to November 11, 2012. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and employees who were absent for three days without notice were considered to have quit.

The claimant was sick and unable to work on November 12 and 13. She properly notified the employer about her absences and found her own replacement for the shifts. The claimant later learned that the replacement was told by a supervisor that she did not have to work the claimant's shifts that they were covered.

A day or two after she called in sick, the claimant received a voice mail from an assistant manager informing her that she had been terminated for having two shifts of no call and no show. The claimant reasonably believed that she had been terminated and did not return to work.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and § 96.5-2-a.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony about receiving the voice mail informing her that she was discharged.

The unemployment insurance rules provide: "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." 871 IAC 24.32(7). The claimant was absent due to illness and properly reported her absences to the employer. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated January 16, 2013, reference 01, is affirmed. 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/css