

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAROL J OLIVAS**  
Claimant

**APPEAL NO: 07A-UI-09004-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TRACO A THREE RIVERS**  
Employer

**OC: 02/11/07 R: 01  
Claimant: Respondent (1)**

Section 96.5-2- a- Discharge

**STATEMENT OF THE CASE:**

Traco A Three Rivers (employer) appealed a representative's September 21, 2007 decision (reference 02) that concluded Carol J. Olivas (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 8, 2007. The claimant participated in the hearing. Mary Lou Friedman, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 25, 2003. The claimant received a copy of the employer's attendance policy. The policy states that during a rolling calendar year if an employee has 32 hours of absence, the employer gives them a verbal warning. When an employee is absent 40 hours, the employer issues the employee a written warning. The employee receives a final written warning after being absent 48 hours in a rolling calendar year. The next step is termination.

During her employment, the claimant has had an on-going attendance issue but she kept her absences under control until the summer of 2007. On July 9, the claimant notified the employer she was ill and unable to work as scheduled. As a result of this absence, the claimant had been absent 32 hours within a rolling calendar year. The claimant received a verbal warning as a result of this absence. On August 6, the claimant notified the employer that her baby was ill and she was unable to work. The claimant received a written warning for being absent 40 hours. The claimant notified the employer on August 24 that she was ill and unable to work. As a result of this absence, the claimant received her final written warning.

On August 30, the claimant was again ill. She had blurred vision and was dizzy. The claimant notified Friedman at her home that she was ill and unable to work. Although Friedman did not respond when the claimant asked if her job was in jeopardy if she did not report to work as scheduled, Friedman suggested that the claimant seek medical attention. The claimant went to the emergency room. A physician believed she had inner ear problems and prescribed medication for the claimant.

The claimant reported to work on August 31. The employer discharged the claimant because she violated the employer's attendance policy when she did not work as schedule on August 31.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

Based on the employer's attendance policy, the employer established justifiable business reasons for discharging the claimant. The facts do not, however, establish that the claimant intentionally or substantially disregarded the employer's interests. The claimant properly notified the employer when she was unable to work. The claimant did not intentionally fail to work as scheduled. Instead, she did not report to work because she was ill and was unable to work. The claimant established a reasonable explanation as to why she did not work as scheduled. Under the facts of this case, the claimant did not commit work-connected misconduct. As of August 26, 2007, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's September 21, 2007 decision (reference 02) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of August 26, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefit paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs