

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER D BROTT
Claimant

APPEAL NO. 09A-UI-08552-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLYING J INC
Employer

OC: 04/26/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 3, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 1, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Meleah Thuesen. Laurie Smith participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part-time for the employer as a line cook, server and prep person from June 2005 to April 29, 2009. The claimant had been warned in January and March 2008 about missing too much work.

The claimant had requested April 8, 2009, off work because her daughter was having tubes put in her ears. At the end of March, her supervisor announced that employees would be allowed one day of absence per month. Her supervisor informed her that she would have to use April 8 for the one day of absence allowed under the policy. During the meeting employees were also told that if they were ill and came into work and were sent home by a supervisor it would not count against them. On April 1, the claimant reported to work with a migraine headache. Her supervisor sent her home after she vomited at work.

The claimant reported to work with flu symptoms on April 28. She told her supervisor that she was not feeling well. Her supervisor told her a short time later that she could go home and her supervisor would cover her shift. The claimant agreed to finish the breakfast deli, and before she left asked the supervisor again if it was okay that she left.

On April 29, 2009, the employer discharged the claimant for excessive absenteeism.

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 unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 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).

No willful and substantial misconduct has been proven in this case. The claimant's absences were due to legitimate health reasons. She was given permission to leave on April 1 and 28. She had requested April 18 off work in advance for her daughter's medical procedure.

DECISION:

The unemployment insurance decision dated June 3, 2009, 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/pjs