

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEATHER M MOORE**  
Claimant

**APPEAL NO: 10A-UI-09612-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**  
Employer

**OC: 05/30/10**  
**Claimant: Respondent (2/R)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's June 28, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on August 25, 2010. The claimant did not respond to the hearing notice or participate in the hearing. Darlene Brown, a human resource assistant, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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 September 10, 2008. The claimant worked full time. The employer requires employees to contact the employer an hour before a scheduled shift when an employee is unable to work as scheduled or the employee cannot find another employee to cover a scheduled shift.

The employer's written attendance policy explains the employer's progressive discipline when an employee has a number of absences in a rolling calendar year. When an employee has four attendance occurrences, the employer gives the employee a verbal warning. The sixth absence in 12 months results in a written warning. The employer gives an employee a final written warning when the employee has eight attendance occurrences. The ninth attendance occurrence results in the employee's discharge. When an employee does not have attendance issues for 45 days, an attendance occurrence is deleted.

During the claimant's employment, the majority of her attendance occurrences were the result of the claimant calling in to say she would be absent for personal reasons. On April 21, 2010, the claimant received her final written warning after she called in to report she was unable to work because her grandfather was ill. The final written warning informed the claimant that her next absence would result in her discharge.

On May 12, the claimant was scheduled to work at 1:30 p.m. The claimant called the employer at 2:45 p.m. to report she was ill and unable to work. The employer discharged the claimant on May 12 for excessive, unexcused absenteeism or for violating the employer's attendance policy.

The claimant established a claim for benefits during the week of May 30, 2010. The claimant has filed for and received benefits since May 30, 2010.

**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 § 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).

The facts establish the claimant knew or should have known her job was in jeopardy for attendance issues when she received the April 21 final written warning. Even though her job was in jeopardy, the claimant did not properly report her May 12 absence. Instead, of contacting the employer by 12:30 p.m., the claimant called the employer at 2:45 p.m. to report she would not be at work. Additionally, the facts do not establish that the claimant was actually ill and unable to work. Based on the evidence presented during the hearing, the claimant committed work-connected misconduct because of her excessive unexcused absenteeism. As of May 30, 2010, the claimant is not qualified to receive benefits.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section.

**DECISION:**

The representative's June 28, 2010 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 30, 2010. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether she is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css