

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENISE L REUSS
Claimant

APPEAL NO. 08A-UI-10460-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EDIBLE ARRANGEMENTS
Employer

**OC: 10/05/08 R: 04
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Denise Reuss filed an appeal from a representative's decision dated November 4, 2008, reference 02, which denied benefits based on her separation from Edible Arrangements. After due notice was issued, a hearing was held by telephone on November 24, 2008. Ms. Reuss participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Reuss was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Reuss was employed by Edible Arrangements from August 8 until September 22, 2008 as a full-time production worker. She was discharged because of her attendance. She missed five days of work due to her child's illness. She presented doctor's statements for three of the absences.

The final absence that prompted the discharge occurred on September 22. Ms. Reuss' child was ill and the daycare would not take him because of the illness. She attempted to find someone else to care for the child but was unable to do so. Because of this final absence, she was discharged. Ms. Reuss had not been warned that she was in danger of losing her job because of her attendance. Attendance was the only reason given for her September 22, 2008 discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified

from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

All of Ms. Reuss' absences were all for reasonable cause, the illness of her child. All of the absences were properly reported. For these reasons, the absences are all excused. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated November 4, 2008, reference 02, is hereby reversed. Ms. Reuss was discharged by Edible Arrangements but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw