

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAYNI D MILLER
Claimant

APPEAL NO: 12A-UI-02245-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD'S INC
Employer

**OC: 01/08/12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 2, 2012, reference 03, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on March 21, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Kimberly Mullican. Kathy Cronin participated in the hearing on behalf of the employer.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked for the employer as a beauty advisor from September 6, 2011, to January 7, 2012.

The employer discharged the claimant on January 7, 2012, for having excessive absences. She had missed work 31 times during her employment. The final absences were on January 2 and 3, 2012.

The claimant's absences, including the absences on January 2 and 3, were due to legitimate illness, including a period of hospitalization. She properly reported her absences to the employer. The claimant had never been issued discipline regarding her attendance.

The claimant was able to and available for work when she applied for unemployment insurance benefits. While she may have been dealing with some emotional problems, she was available for work and actively seeking employment.

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 § 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).

871 IAC 24.32(7) provides:

Excessive unexcused absenteeism. 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.

The employer may have had justification for discharged the claimant due to her absences, but no willful and substantial misconduct has been proven in this case. Her absences were all for legitimate grounds and were properly reported.

DECISION:

The unemployment insurance decision dated March 2, 2012, reference 03, is reversed. 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