

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARRI N ALLDRIDGE
Claimant

APPEAL NO. 13A-UI-09230-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES INC
Employer

OC: 06/23/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated July 29, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that the claimant was dismissed for excessive absences but the absences were due to illness or properly reported. After due notice, a telephone hearing was held on September 16, 2013. Claimant participated. The employer participated by Turkessa Newsom, Human Resource Generalist.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Ms. Karri Alldridge was employed by APAC Customer Services, Inc. from September 3, 2012 until December 31, 2012 when she was discharged for excessive absenteeism. Ms. Alldridge was employed as a full-time customer service representative and was paid by the hour.

Ms. Alldridge last reported for work on December 1, 2012. The claimant had been injured at work and been ill and hospitalized. Ms. Alldridge provided the required notification to the employer each day that she was absent and informed the employer that the reason for her absence was due to illness or injury.

While Ms. Alldridge was in Iowa City being hospitalized and seeking medical treatment for her condition, the employer sent Ms. Alldridge a letter informing her that she must return to work by a specified date. Ms. Alldridge returned after that date from the hospital and, therefore, did not have an opportunity to respond to the letter. No further letters were received by Ms. Alldridge from her employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

871 IAC 24.32(7) provides:

(7) 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 has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The Supreme Court of the State of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is a form of job misconduct. The Court held that the absences must both be excessive and unexcused and that the concept includes tardiness, leaving early, etc. The Court further held, however, that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer.

Inasmuch as the evidence in the record establishes that Ms. Alldridge's absences were due to illness or injury and properly reported each day, the administrative law judge concludes that the claimant was discharged under non disqualifying conditions. Claimant is eligible to receive unemployment insurance benefits, provided that she meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated July 29, 2013, reference 01, is affirmed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs