

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHRIN N DOTY**  
Claimant

**APPEAL NO. 12A-UI-10201-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABCM CORPORATION**  
Employer

**OC: 07/29/12**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Kathrin Doty, filed an appeal from a decision dated August 17, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on October 9, 2012. The claimant participated on her own behalf. The employer, ABCM, participated by Administrator Sharon Quail, Human Resources Coordinator Rayne Nolte and DON Abby Carney.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Kathrin Doty was employed by ABCM from May 9, 2012 until July 31, 2012 as a full-time registered nurse. The employer requires any employee who misses a scheduled shift to find his or her own replacement. If a replacement is not found then the employer will find one and count the absence against the employee. However, regardless of whether an employee finds their own replacement, the absence is still counted against them.

Ms. Doty missed nine days in the time she was employed. Four were for illness which were properly reported and excused by a doctor's note. Two absences were for a family funeral and replacements were found for both days. She missed two days due to her son coming home from a facility, one for the visit and another to go to the doctor.

The final incident occurred on Sunday, July 29, 2012. Ms. Doty had been the victim of a domestic violence situation the day before. The police were notified and so was the Department of Human Services. Ms. Doty was scheduled to work on Monday, July 30, 2012, at 2:00 p.m. The Department of Human Services appeared at her home at 11:00 a.m. without prior notice to investigate the matter because there were children involved. Ms. Doty was required to be present and attempted to find a replacement on short notice but was unsuccessful. She notified the employer of the absence. The next day she was discharged.

## 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 claimant never received any formal disciplinary action for her attendance. She made good faith efforts to find replacements for her absences and did so quite often. Nonetheless the employer counted these absences, for which she found her own replacement, against her. While it is understandable the employer is concerned with the care of its residents, the question is whether the absences were unexcused under the provisions of the above Code section.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425

N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

The record does not support a finding the claimant absences were unexcused. She properly reported them, had doctor's excuses, found replacements for most of them and the final occurrence was due to matters completely beyond her control. This does not constitute excessive, unexcused absenteeism and disqualification may not be imposed.

**DECISION:**

The representative's decision of August 17, 2012, reference 01, is reversed. Kathrin Doty is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs