

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE L KELLEY
Claimant

APPEAL NO. 12A-UI-13083-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS ENTERPRISES INC
Employer

**OC: 10/23/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 23, 2012, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on December 3, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. John Henson participated in the hearing on behalf of the employer with a witness, Brittany Sickels.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from February 5, 2001, to October 3, 2012. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination if they had 10 attendance points within 12 months. She was warned on July 6, 2012, because she had seven attendance points.

The claimant was ill and unable to work on September 24, 25, and 26, 2012, which put her at nine attendance points. She properly reported her absences and brought in a doctor's excuse for those days.

The claimant was ill and unable to work on October 1, 2012. She properly called in and reported her absence, but it was her tenth attendance point so she was discharged on October 4, 2012.

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.

No willful and substantial misconduct has been proven in this case. The claimant's final absences were due to legitimate illness and were properly reported.

DECISION:

The unemployment insurance decision dated October 23, 2012, reference 01, 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