IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TARA L MCINTOSH
Claimant

HILLCREST FAMILY SERVICES
Employer

APPEAL NO: 08A-UI-05425-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/11/08 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Hillcrest Family Services (employer) appealed a representative's June 3, 2008 decision (reference 01) that concluded Tara McIntosh (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 24, 2008. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Julie Heiderscheit, Vice President of Human Resources. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 17, 2008, as a full-time mental health tech 1. The claimant signed for receipt of the employer's handbook on March 17, 2008. The handbook indicated an employee could be terminated for failure to complete the required training. The employer issued the claimant no warnings during her employment.

On May 4, 2008, the claimant reported to work at 7:00 p.m. She worked until 7:00 a.m. on May 5, 2008. On May 5, 2008, the claimant was supposed to attend required training from 3:00 to 5:00 p.m. The claimant fell asleep. The employer telephoned the claimant. The claimant said she was up all night, forgot about the training and fell asleep. On May 6, 2008, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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(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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has not established that the claimant had a history of unexcused absences or failure to notify the employer of an absence. The claimant's single absence can not be considered excessive. The employer scheduled the claimant for 14 hours of work or training in a 24-hour period within the first two months of the claimant's employment. The employer did not provide sufficient evidence of job-related misconduct and, therefore, did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's June 3, 2008 decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs