

nurse by Alegent Health from 2003 until she was discharged on or about July 27, 2005 because of excessive absences. Her last absence was due to illness. Pursuant to company policy, Ms. Orme notified the company at least four hours before the beginning of her shift.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must establish is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). The evidence establishes that the final incident was an absence due to illness properly reported to the employer. Under Iowa law, such an absence is not an act of misconduct. See 871 IAC 24.32(7). Benefits are allowed.

DECISION:

The unemployment insurance decision dated August 29, 2005, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

kjf/kjw