

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRYSTAL J ARNOLD
Claimant

APPEAL NO: 09A-UI-16166-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SYNOVATE INC
Employer

OC: 10/04/09
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's October 22, 2009 decision (reference 01) that concluded she was not qualified to receive benefits, and the employer's account was not subject to charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on December 3, 2009. The claimant participated in the hearing. Prior to the hearing, the employer informed the Appeals Section that no one on the employer's behalf would participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 4, 2008. The claimant worked as a full-time interviewer.

During her employment, the employer knew the claimant was working with DHS to regain custody of her daughter. In early 2009 the claimant missed numerous days of work after her hopes to have custody of her daughter were denied. The claimant called in her absences but she did not know she could have requested a leave of absence for this timeframe. As a result of her numerous absences, the claimant's absences in early 2009 put her job in jeopardy. After the claimant regained control of her life, she did not have an attendance issue for several months.

The claimant did not work on Mondays or Fridays. These were the days her daughter visited her. On Friday, June 5, the claimant was ill and unable to visit her daughter as scheduled. These visits were necessary and mandatory because the claimant was again trying to regain custody of her daughter.

On Tuesday, June 9, the claimant talked to a supervisor about reporting to work late on June 10. DHS officials told the claimant she had to visit her daughter on June 10 to make up for the June 5 visit when she had been ill and unable to visit her daughter. The scheduled visit with her daughter was 9:00 a.m. to 5:00 p.m. The claimant was scheduled to work at 4:00 p.m. The claimant intended to report to work by 6:00 p.m. Instead of approving the claimant's request to report to work late, the employer gave the claimant a written warning for an absence she had a few weeks earlier.

A few weeks earlier, the claimant had a sinus infection and called the employer to see if she had enough points to cover an absence. The person in charge of attendance was not at work that day, but another employee looked up the claimant's points and told the claimant she had enough points to cover this absence. As a result of this information, the claimant did not report to work. When the employer gave the claimant the June 9 written warning, the person in charge of attendance just told the claimant she received incorrect information because she had not had enough points to cover her earlier absence. The June 9 warning informed the claimant that if she had any further absences, she would be discharged.

The claimant attempted to contact the manager on Tuesday but was unable to talk to her until Wednesday. On June 10, the manager told the claimant that if she did not report work as scheduled at 4:00 p.m., she no longer had a job. The claimant was unable to report to work by 4:00 p.m. because of the mandatory visit with her daughter until 5:00 p.m.

Although the claimant only wanted to report late for work because of an unscheduled, mandatory visit with her daughter, the employer discharged her on June 10 because of continuing attendance issues and because she did not report to work as scheduled at 4:00 p.m. on June 10, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer established business reasons for discharging the claimant. The claimant's most recent absences, illness and a mandatory visitation, do not amount to an intentional disregard of the employer's interests. The facts do not establish that the claimant committed work-connected misconduct. Therefore, as of October 4, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's October 22, 2009 decision (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of October 4, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css