

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEGAN N STARK
Claimant

SHOPKO
Employer

APPEAL NO. 11A-UI-02274-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/05/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated February 15, 2011, reference 07, that held she was discharged for excessive unexcused absenteeism on November 3, 2010, and benefits are denied. A hearing was held on March 22, 2011. The claimant participated. Bethany Strawn, General Merchandise Manager, and Melinda Mosser, Customer Service, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant worked as a general merchandise sales floor person from September 15, 2010 to November 3. The claimant was a 90-day probationary employee, and she received the employer attendance policy.

Claimant was absent from work on October 6, 20 and 21. The claimant was a no-call/no-show to work on October 27. Employer discharged claimant for excessive absenteeism in violation of the employer probationary attendance policy on November 3.

Claimant was not available when called for the hearing.

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(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 administrative law judge concludes the employer established misconduct in the discharge of the claimant on November 3, 2010, for excessive "unexcused" absenteeism.

The employer documentation and testimony established that claimant violated her probationary period attendance by incurring three absences compounded by a no-call/no-call show to work that is excessive unexcused absenteeism.

DECISION:

The decision of the representative dated February 15, 2011, reference 07, is affirmed. The claimant was discharged for misconduct in connection with employment on November 3, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css