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

TINA M FLANDERS
Claimant

ACH FOOD CO INC
Employer

APPEAL NO. 12A-UI-06046-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/22/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 16, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 18, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Bill Nelson participated in the hearing on behalf of the employer. Exhibits A through F were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a line operator from November 20, 2006, to February 13, 2012. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer prior to the start of their shift if they were not able to work as scheduled. The claimant worked Monday through Thursday, 5 a.m. to 3:30 p.m.

The claimant was sick and unable to work starting February 14 due to an upper respiratory infection and chronic fatigue syndrome. She was treated by a physician who certified that the claimant was unable to work from February 14 to April 9, 2012.

The employer discharged the claimant because management believed that she had called on March 18 and reported that she was returning to work on April 3 and then failed to report to work or call in that day. The claimant had actually reported that she would be off work through April 3.

The claimant had a doctor's appointment on April 3. Her doctor released her to return to work on April 9. She called the employer on April 4, 2012, to report that she would be off work until April 9.

The claimant reported to work as scheduled on April 9, 2012, with Family and Medical Leave Act medical certification that she was unable to work February 14 - April 9, 2012. The employer, however, discharged her for being absent without notice on April 3.

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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that when she called on March 18, she informed the person that she would be off work through April 3. She was not a no-call no-show as the employer believed on April 3. The evidence shows the claimant was sick and unable to work with doctor's certification on the dates she missed work. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated May 16, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/css