

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BIANCA Q WINTERS**

Claimant

**APPEAL NO. 13A-UI-09559-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APAC CUSTOMER SERVICES INC**

Employer

**OC: 07/28/13**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated August 16, 2013, reference 01, which denied benefits finding that the claimant voluntarily quit work because of a non-work-related illness or injury. After due notice was provided, a telephone hearing was scheduled for September 24, 2013. Claimant participated. The employer witnesses were not available at the telephone number provided. Repeated messages were left.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Bianca Winters was employed by APAC Customer Services, Inc. from December 27, 2011 until July 15, 2013 when she was discharged by the employer. Ms. Winters was employed as a full-time customer service representative and was paid by the hour. Her immediate supervisor was Jackie Zarooba.

Ms. Winters last day of work was April 29, 2013. On that day the claimant became ill at work and was hospitalized. Ms. Winters provided medical documentation to her employer verifying her need to be absent for medical reasons. Ms. Winters was hospitalized on more than one occasion and certified as unable to work by her doctor until released by her physician on July 29, 2013.

Ms. Winters kept the employer notified of her impending absences due to illness and provided medical documentation to the employer supporting her need to be absent for medical reasons. In July 2013, Ms. Winters received a letter from APAC Customer Services, Inc. informing her that she would be discharged from employment if she did not return to work by July 15, 2013. Ms. Winters was unable to return to work because her medical condition had not improved and the employer continued to be notified of her inability to work for medical reasons. The claimant informed her employer that her next doctor's appointment would take place on July 29, 2013. Ms. Winters received no further correspondence from APAC Customer Services, Inc. until

July 12, 2013. At that time she received a letter telling her that she would be discharged if she did not return to work by August 9, 2013. Although the claimant had been fully released to return to work effective July 29, 2013, she did not attempt to return because she believed the previous letter had discharged her effective July 15. The claimant did not receive the letter from the employer setting her final day as August 9 until after that date.

## **REASONING AND CONCLUSIONS OF LAW:**

The first question is whether the claimant quit employment or was discharged by the employer. The administrative law judge concludes based upon the evidence in the record that Ms. Winters did not quit her employment but that she was discharged. The question then become whether the claimant's discharge took place because of misconduct in connection with the work. It did 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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Conduct serious enough to warrant discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The Supreme Court of the state of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct. The Court held that the absences must be both excessive and unexcused and that the concept includes tardiness, leaving early, etcetera. The Court further held, however, that absence due to illness or other excusable reasons are "deemed excused" if the employee properly notifies the employer.

Inasmuch as the evidence in the record establishes that the claimant was discharged from employment and the claimant kept the employer notified of her inability to return to work for medical reasons and her absences were properly reported, the administrative law judge concludes that the claimant was discharged for no disqualifying reasons. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated August 16, 2013, reference 01, is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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