

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**CHRISTINE L HEIMANN
625 S 3RD AVE W
NEWTON IA 50208**

**ACS IMAGE SOLUTIONS INC
% TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-08571-CT
OC: 01/11/04 R: 02
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

ACS Image Solutions, Inc. (ACS) filed an appeal from a representative's decision dated July 29, 2004, reference 01, which held that no disqualification would be imposed regarding Christine Heimann's separation from employment. After due notice was issued, a hearing was held by telephone on August 30, 2004. Ms. Heimann participated personally and Exhibits A through D were admitted on her behalf. The employer participated by Melissa Rosen, Human Resources Generalist, and David Horn, Strategic Business Unit Manager. The employer was represented by Chris Scheibe of Talx UC Express. Exhibits One through Seven were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Heimann began working for ACS on September 23, 2002 as a full-time prep person. She was discharged because of her attendance.

Ms. Heimann was absent from work on 20 separate occasions in calendar year 2004. Only two of the absences were approved under the Family and Medical Leave Act (FMLA). She requested FMLA coverage for other dates but was not approved. Ms. Heimann had doctor's excuses for all dates absent with the exception of February 3 and March 26, 2004. The absence of February 3 was due to the fact that Ms. Heimann was being held against her will due to domestic violence. She was last at work on June 18 and called to report that she would be absent on June 21. On June 25, a note was faxed to the employer by Capstone Behavioral Healthcare which indicated Ms. Heimann would need to remain off work until July 5.

Ms. Heimann received warnings regarding her attendance on November 10 and December 23, 2003, and May 11, 2004. Because her final absences were not covered by FMLA and because she had exceeded the employer's attendance standards, Ms. Heimann was discharged effective June 29, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Heimann was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences.

The administrative law judge concludes that all of the absences identified by the employer (Exhibit One) should be considered excused as they were for reasonable cause and were properly reported to the employer. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. Inasmuch as the absences were caused by illness or other reasonable cause, they do not evince a willful or wanton disregard of the employer's standards. For the reasons stated herein, it is concluded that disqualifying misconduct has not been established. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed.

DECISION:

The representative's decision dated July 29, 2004, reference 01, is hereby affirmed. Ms. Heimann was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf