

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTI R TOWNE**  
Claimant

**APPEAL NO. 09A-UI-15432-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SIMBEC INC**  
Employer

**OC: 09/13/09**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Suspension and Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated October 7, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 16, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Karla Meadows. Shawn Simonsen participated in the hearing on behalf of the employer. Exhibit One and Two were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as a housekeeper for the employer from May 31, 2006, to September 10, 2009. The claimant was informed and understood that under the employer's work rules, use of illegal drugs by employees was prohibited and employees were required to find their own replacement if they were unable to work and personally notify their immediate supervisor.

On August 18 2009, the claimant was absent from work due to personal problems because her boyfriend broke up with her. She did not find her own replacement or personally notify the employer about her absence. Instead, a friend of the claimant called the general manager, Shawn Simonsen, to inform Simonsen that the claimant was unable to work due to having a nervous breakdown.

When the claimant returned to work on August 20, 2009, Simonsen warned her about missing work without finding a replacement and not contacting her personally about her absence.

After work on September 10, the police came to the claimant's home and took her son from her because she had tested positive for illegal drugs based on testing ordered by the Department of Human Services. The claimant was angry that her son had been taken, and she threatened to commit suicide. The police then took the claimant to the hospital for evaluation.

On the morning of September 11, the claimant's mother called the employer to let the employer know that the claimant had been taken to the hospital by the police and would not be at work. Later that day, the claimant called Simonsen and said that she planned to go through drug treatment. She told Simonsen that if the employer needed to fire her, to fire her. Simonsen told the claimant that she was on unpaid leave until she had taken care of her drug problems. She did this to give the claimant an incentive to take care of her drug problems and return to work afterward.

The claimant sought outpatient treatment for her drug problems. She applied for unemployment insurance benefits during the week of September 13, 2009, because she was without any income due to the unpaid leave.

The claimant stopped by the office to pick up her check on September 23, 2009. Simonsen asked the claimant to turn in her uniform. When the claimant asked why, Simonsen told the claimant that she assumed she was quitting because the employer had received notice of the unemployment claim the claimant had filed. The claimant told Simonsen that she had not quit, but Simonsen insisted she turn in her uniform.

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

The first issue is to decide if the claimant quit or was discharged. The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code section 96.5-1 and 96.5-2-a.

The employer initiated the separation from employment by placing the claimant on an unpaid leave of absence. The claimant did not request the leave. The employer actually suspended the claimant.

871 IAC 24.32(4) provides that in cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved. 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).

What is difficult here is that while the unpaid leave was triggered by the claimant's absence from work and admission that she had failed a drug test, the employer's actions were taken, according to Simonsen's testimony, because the claimant said she was going to get help. Rather than discharge her, Simonsen decided to give the claimant an incentive to take care of her drug problems and then return to work. Later, Simonsen assumed the claimant quit and asked her to turn in her uniform because she had filed for unemployment benefits. Applying for unemployment benefits, however, does not necessarily mean a person has quit their employment, it can mean the person is seeking benefits because they are not working and have no income due to an action taken by their employer. The employer's assumption about the claimant quitting was incorrect. When the employer insisted the claimant return her uniform even after the claimant said she had not quit, the employer terminated her employment.

The claimant's absence was due to her being hospitalized against her will because she was expressing suicidal thoughts. This is not willful misconduct. The Iowa Supreme Court has ruled that an off-duty misconduct can amount to work-connected misconduct if it violates a known work rule, Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992). Kleidosty, however, involved an employee fired for selling drugs while off duty, which affected the employer's reputation. The employer has not proven that the claimant committed work-connected misconduct by admitting she had failed a drug test administered by the Department of Human Services while the claimant was off duty. There is no evidence the claimant reported to work while impaired by drugs.

**DECISION:**

The unemployment insurance decision dated October 7, 2009, 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/pjs