

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATIENCE C HURLEY**  
Claimant

**APPEAL NO: 09A-UI-17105-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE AMERICAN BOTTLING COMPANY**  
Employer

**OC: 10/04/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's November 4, 2009 decision (reference 02) that concluded she was not qualified to receive benefits, and the employer's account was not subject to charge because the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. A telephone hearing was held on December 16, 2009. The claimant participated in the hearing. Brenda Dixson, the human resource director, and Julie Montgomery, a human resource assistant, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on December 13, 2004. The claimant worked full-time driving a forklift. The claimant understood the employer's attendance policy and that in a rolling calendar year if she accumulated more the 5.5 attendance points, the employer would discharge her.

On August 12, 2009, the claimant received a notice she had accumulated 5.5 points after she had missed a punch. The claimant tried to have the half point for a missed punch removed, but the employer refused to do this. When the claimant did not work as scheduled on October 1, she received one point. Since one attendance point had rolled off since August 12, she again had 5.5 attendance points. The claimant understood her job was in jeopardy because of her attendance.

On October 21, 2009, the claimant overslept and called the employer at 6:02 a.m. to report she had overslept. The claimant asked the employer to call her back because she did not want to go to work if the employer would just discharge her. The employer did not call her until 10:30 a.m. Since she had not reported to work on time, by 6:00 a.m., the claimant would have

received a half point if she had reported to work on October 21. The employer confirmed the fact she was discharged on October 21 because she had too many attendance points.

During the last six months of her employment, the claimant was on FMLA April 16 through 30, May 1 through 15, August 24 through 28 and September 1 through 23. The claimant accumulated her points by missing punches, reporting ill and being absent without a reason given. The claimant did not receive attendance points for excused absences, such as when she was on FMLA.

The claimant asserted the medication she took resulted in her oversleeping and her discharge on October 21, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. The facts do not establish that the claimant intended to quit her employment. Instead, the employer discharged her because she violated the employer's attendance policy by accumulating too many unexcused absences.

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew her job was in jeopardy when she received notice she had accumulated 5.5 points as of October 1, 2009. Since the evidence does not indicate the claimant had any recent problems getting to work on time, the claimant's failure to get up so she would be at work by 6:00 a.m. on October 21 does not establish that she intentionally failed to work as scheduled. On October 21, the claimant inadvertently overslept. While the employer established compelling business reasons for discharging her, the evidence does not establish that the claimant committed work-connected misconduct. Therefore as of October 4, 2009, the claimant is qualified to receive benefits.

**DECISION:**

The representative's November 4, 2009 decision (reference 02) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected

misconduct. As of October 4, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/pjs