

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAJAYMA R RAINEY
Claimant

APPEAL NO. 10A-UI-05430-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 08/23/09
Claimant: Appellant (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

LaJayma Rainey filed a timely appeal from the March 30, 2010, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on May 28, 2010. Ms. Rainey participated. John O’Fallon of Barnett Associates represented the employer and presented testimony through Patty Maltese, Customer Service Manager. The administrative law judge took official notice of the official Clerk of Court records concerning Woodbury County Criminal Case Number FECR055989, which records are available to the public at the Iowa Judicial Branch’s website, www.iowacourts.state.ia.us.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: LaJayma Rainey was employed by Qwest as a Customer Sales and Service Associate. Ms. Rainey last performed her duties on February 4, 2010. Ms. Rainey was absent due to illness on February 5, 8, 9, 10, 11 and 12 and properly notified the employer each of those days of her need to be absent from the employment. The employer’s policy required that Ms. Rainey telephone the employer prior to the scheduled start of her shift if she needed to be absent. Ms. Rainey was aware of the policy.

On February 15, 2010, Ms. Rainey was absent from work because she had to take her child to the emergency room due to a high fever. Ms. Rainey took her child to the emergency room at about 6:00 a.m. and was scheduled to start work at 9:30 a.m. Ms. Rainey did not notify the employer prior to the scheduled start of her shift that she needed to be absent. Ms. Rainey contacted the employer in mid-afternoon, when she became aware of the employer’s multiple attempts to reach her.

On the evening of February 15, 2010, Ms. Rainey was arrested and charged with multiple felony drug charges. Ms. Rainey remained incarcerated until March 2, 2010, when a judge amended

her bond and Ms. Rainey posted bond with the assistance of a bail bonds company. Ms. Rainey's immediate supervisor at Qwest was Patty Maltese, Customer Service Manager. Ms. Maltese had been in repeated contact with Ms. Rainey's mother during Ms. Rainey's extended absence.

Ms. Rainey made contact with her supervisor on March 3 and was told to report to work on March 4. On March 4, the employer notified Ms. Rainey that she was discharged from the employment for attendance.

REASONING AND CONCLUSIONS OF LAW:

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.

The employer has the burden of proof in a discharge matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment 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).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of

whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

Pursuant to Iowa Administrative Code rule 871 IAC 24.25(16), a claimant is deemed to have quit the employment if the claimant becomes incarcerated. The administrative rule indicates by its intended effect that absences due to incarceration are unexcused absences for unemployment insurance benefits.

The weight of the evidence indicates that Ms. Rainey was discharged for attendance after an unexcused absence that lasted at least from February 16 to March 2, 2010. This extended absence by itself was enough to establish excessively unexcused absences that amounted to misconduct in connection with the employment. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Rainey was discharged for misconduct. Accordingly, Ms. Rainey is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Rainey.

The outcome in the case would obviously have been the same if the administrative law judge had concluded, pursuant to 871 IAC 24.25(16), that Ms. Rainey's extended absence due to incarceration has been a voluntary quit. Under that analysis, the voluntary quit would have been without good cause attributable to the employer. See 96.5(1).

DECISION:

The Agency representative's March 30, 2010, reference 03, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs