

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN M BOZEK
Claimant

APPEAL NO. 12A-UI-14912-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA DEPARTMENT OF HUMAN
SERVICES**
Employer

**OC: 11/25/12
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Iowa Department of Human Services (DHS), filed an appeal from a decision dated December 17, 2012, reference 01. The decision allowed benefits to the claimant, Dawn Bozek. After due notice was issued, a hearing was held by telephone conference call on January 23, 2013. The claimant participated on her own behalf. The employer participated by Karen Roenfeld, Pamela Stipe and was represented by Employers Edge in the person of Sandra Linsin. Exhibits One, Two and Three were admitted into the record.

The parties were advised at the start of the hearing if either lost the connection during the hearing the administrative law judge would not call them back until they contacted the Appeals Section to provide a phone number where they could then be reached. The claimant was in her car on a cell phone. She lost the connection at 3:39 p.m. By the time the record was closed at 3:56 p.m. she had not contacted the Appeal Section to request to rejoin the hearing.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Dawn Bozek was employed by DHS from January 30, 2007 until November 26, 2012 as a full-time residential treatment worker. She had been approved for intermittent FML in July 2012 for two conditions, abdominal pain and stress. The limitations for abdominal pain were one to two episodes per month lasting one to two days. For stress one to two episodes per month lasting one to three days. The approval also required her to call in and notify the employer every day she would miss work and to specify under which medical condition she was taking the FML.

Ms. Bozek called in on November 3, 4, 5, 6, 2012, only stating she was sick and taking FML but did not indicate which condition. On November 7, 2012, she called and stated she would be in the hospital the next two days and would call back later. But she was not in the hospital she

was leaving Iowa to go to California to see family members. On November 8, 2012, she called and asked to take a medical leave of absence for one week and was told to talk to Treatment Program Administrator Karen Roenfeld.

The claimant and Ms. Roenfeld talked on November 13, 2012, at which time the claimant was in California with her family because her kids were gone, her boyfriend was gone, she had a lot of bills and was going to be seeking treatment for mental illness and substance abuse. The employer told her she was currently on an unapproved leave of absence and had no sick leave or vacation, and her FML did not cover either of these new issues. She was instructed to apply, in writing, for medical leave of absence with documentation filled out by a doctor about the precise diagnosis and the amount of time she would need to be gone. This was not done as the doctors in California would not accept Iowa insurance coverage.

A letter was sent November 16, 2012, outlining all the information which had been discussed on the phone. She was given two days from the date of receipt of the letter to provide the information. The letter was received November 24, 2012, but no response was forthcoming.

A second letter was sent November 26, 2012, notifying her she had been removed from the payroll.

Dawn Bozek has received unemployment benefits since filing a claim with an effective date of November 25, 2012.

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.

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 had granted the claimant FML and her only restriction was that she must report all absences and specify which condition was the cause of her missing work. She failed to do this for several days in November 2012 and then reported she was going to be in the hospital for the next few days when in fact she was merely traveling to California to go to her family.

Once there the employer attempted to work with her requiring her to get new FML certification or at least a doctor's not specifying the reason for medical leave of absence and the duration. She failed in all particulars to provide the employer with the necessary paperwork in spite of phone calls and letters giving more precise details.

Without documentation to support her prolonged and unexcused absences since November 2, 2012, she was discharged for excessive, unexcused absenteeism. While the absences may have been due to illness they were not properly reported and not properly excused by doctor's notes or even a specification as to which FML she was using for some of them. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of December 17, 2012, reference 01, is reversed. Dawn Bozek is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css