

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAMIELLE L SCHIPPERS
Claimant

APPEAL NO. 07A-UI-00299-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

USA HEALTHCARE - NEWTON
Employer

**OC: 11/26/06 R: 02
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

USA Healthcare filed an appeal from a representative's decision dated December 29, 2006, reference 01, which held that no disqualification would be imposed regarding Camielle Schippers' separation from employment. After due notice was issued, a hearing was held by telephone on January 25, 2007. Ms. Schippers participated personally. The employer participated by Pam Wiltfang, Administrator.

ISSUE:

At issue in this matter is whether Ms. Schippers was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Schippers' last period of employment with USA Healthcare began on March 28, 2006. She worked as a full-time certified nursing assistant. The decision to discharge her was prompted by the fact that she did not report for work on November 27 and did not call the employer. Ms. Schippers had been working a Friday, Saturday, and Sunday schedule. The employer was in the process of switching her to a Monday through Friday schedule. On November 23, she arranged to have November 26 off in exchange for working November 28. She was not told she was scheduled to work on Monday, November 27. When Ms. Schippers looked at the schedule on November 25, it did not indicate that she was scheduled to work on November 27.

Ms. Schippers had missed work because she did not have child care on April 22 and September 23. She left for lunch on November 17 and later called to report that she did not have a way back to work. She was late reporting to work on November 19 because she did not have child care. Ms. Schippers left work early due to family problems on October 22. Her remaining absences were due to either her own illness or that of a child. She had not received any verbal or written warnings regarding her attendance.

REASONING AND CONCLUSIONS OF LAW:

Ms. Schippers was discharged by USA Healthcare. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). There must be a current act of misconduct to support a disqualification from benefits. 871 IAC 24.32(8). In the case at hand, Ms. Schippers' discharge was triggered by the fact that she did not report for work or call the employer on November 27.

The evidence established that Ms. Schippers did not know she was scheduled to work on Monday, November 27. She did not usually work on Mondays. Although she knew she was being switched to a Monday through Friday schedule, the new schedule had not been posted when she was last at work on November 25. She had not been verbally advised that the switch in days was effective November 27. For the above reasons, Ms. Schippers did not report for work on November 27. Inasmuch as she had no notice that she was to work on that date, her failure to appear was not an act of misconduct.

The next most previous absence for Ms. Schippers was on November 19 when she was late due to lack of child care. However, an absence that occurred on November 19 did not represent a current act in relation to the November 28 discharge date. After considering all of the evidence, the administrative law judge concludes that the employer has failed to satisfy its burden of proving that Ms. Schippers' discharge was predicated on a current act of misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated December 29, 2006, reference 01, is hereby affirmed. Ms. Schippers was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs