

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ASHANTI S LEWIS

Claimant

AMERICAN CUSTOMER CARE INC

Employer

APPEAL 15A-UI-00249-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/06/14

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Admin. Code r. 871-24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 31, 2014 (reference 03) unemployment insurance decision that denied benefits based upon the claimant's separation. The parties were properly notified about the hearing. A telephone hearing was held on January 30, 2015. The claimant participated with witnesses Jamal Smith and Ashley Washington. The employer did not participate.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a customer service representative and was separated from employment on December 8, 2014 when she was discharged for her attendance.

The claimant last performed work on December 1, 2014. On December 2 the claimant did not perform work and went to the emergency room. The claimant had lost her voice. The claimant's job could not be performed without her needing to speak to customers. Her boyfriend, Jamal Smith, spoke to her employer, notifying of her absence. Her sister, Ashley Washington, also worked for the employer and told Lexi at the front desk that claimant would not be in due to illness and asked a message be given to the claimant's manager. The claimant was not scheduled December 3. The claimant did not return to work on December 4 because she had returned to the emergency room. Mr. Smith again spoke with her employer regarding her absences. The claimant attempted to call the employer December 5 and 6 and left messages. The employer did not call back. The claimant was discharged en route to work on December 8 by her trainer, who said she was being fired for her absences. The claimant said she had doctor's notes but the trainer said it was too late. Prior to separation, the claimant had not been warned for her attendance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(1)a, (7) 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

(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 has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness

should be treated as excused. *Gaborit, supra*. In this case, the claimant missed two of her final three shifts as a result of being in the hospital. The claimant lost her voice, which was a necessary requirement to perform her job as a customer service representative and was sick. When she could not speak, she asked her sister and boyfriend to notify her employer. The claimant intended to bring in the medical documentation to support her absences when she returned to work but had been discharged.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Because the last absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. Since the employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

DECISION:

The December 31, 2014 (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

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