

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER L KACZINSKI
Claimant

APPEAL NO. 10A-UI-10711-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VON MAUR INC
Employer

OC: 06/20/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated July 14, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on September 15, 2010. Claimant participated. The employer participated by Ms. Jill Madsen, Human Resource Manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Amber Kaczinski was employed as a full-time marking room employee for this employer from May 17, 2010 until June 23, 2010 when she was discharged from employment for excessive absenteeism.

The claimant was absent from work due to the illness of her child and subsequently because the claimant herself had become ill and was unable to report for work. Ms. Kaczinski had provided proper notice to the employer of her impending absences and had initially provided medical documentation showing that she had been absent due to the illness of her child. Upon the claimant's return to work she was requested to provide medical documentation to support her need to be absent. The claimant was unable to provide the documentation as she had no medical insurance and did not have the funds to re-visit the physician. Although the claimant had been absent due to illness and had provided proper notification, her most recent absences were not excused by the company as she did not provide the required documentation. Claimant was, therefore, discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question for the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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. of Appeals 1992).

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 Supreme Court of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct. The court held that the absenteeism must be both excessive and unexcused. The court further held, however, that absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer.

In this case the evidence establishes that Ms. Kaczinski was absent due to illness and had properly notified the employer of her impending absences. The claimant's inability, in this case,

to provide medical documentation due to lack of funds does not rise to the level of intentional disqualifying misconduct. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated July 14, 2010, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs