

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

EBONI S ROSS
5600 JERSEY RIDGE RD R-5
DAVENPORT IA 52803

IOWA MASONIC NURSING HOME
TRUSTEES OF THE GRAND
CHARITY FUND
2500 GRANT ST
BETTENDORF IA 52722

Appeal Number: 04A-UI-12922-HT
OC: 11/07/04 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Eboni Ross, filed an appeal from a decision dated December 3, 2004, reference 03. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on December 29, 2004. The claimant participated on her own behalf. The employer, Iowa Masonic Nursing Home (Iowa Masonic), participated by Administrator Marilyn Spangler. Exhibit One was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Eboni Ross was employed by Iowa Masonic from March 12, 2003 until November 9, 2004. She was a part-time certified nursing assistant. During the course of her employment she received copies of employer policies regarding progressive disciplinary procedures and attendance. As a certified nursing assistant she had monthly mandatory meetings and could only miss three per year, and a written warning would be issued if a fourth meeting was missed. Three warnings in any combination would result in discharge.

Ms. Ross received numerous verbal counselings before being issued her first written warning and three-day suspension on July 7, 2004. Another warning was prepared on October 18, 2004, for absenteeism, inappropriate conversations with a resident and arguing with a resident. The employer was not able to issue the warning to the claimant right away because of her schedule. Before it could be issued she missed another day of work on November 2, 2004, because of legal problems she was having. Someone had written a bad check on her account and she had to go to the bank and to the police departments to file reports. However, she was done with these legal matters in time to report to work but did not do so.

On November 3, 2004, the claimant called Director of Nursing Jodie Hippler and asked to be off for the mandatory meeting on November 4, 2004, because she had to go to another city and file another police report for the same matter. She was told she would not be excused from the mandatory meeting. Ms. Ross was done with the legal matters in time to attend the meeting but chose to attend a radiology class rather than attend the meeting.

On November 8, 2004, she was given the warning from October 18, 2004, and another written warning for missing a fourth mandatory meeting. She was then discharged by Administrator Marilyn Spangler and Ms. Hippler on November 9, 2004, for accumulating three written warnings in four months.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 claimant had been counseled and warned about her absenteeism and general poor job performance during the course of her employment. She was given the relevant policies by the employer, even if she was not conversant with the contents of those policies. Her supervisor had denied her permission to miss the meeting and she elected to do so anyway, in spite of prior warnings and counselings. The claimant made a decision to attend class rather than the meeting and this was a personal matter she felt took priority. Matters of purely personal consideration are not considered excused absences. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The claimant failed to appear for the meeting as required and, in conjunction with prior warnings and absences, this is excessive, which is misconduct under the provisions of the above Administrative Code section. She is disqualified.

DECISION:

The representative's decision of December 3, 2004, reference 03, is affirmed. Eboni Ross is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/pjs