

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA D GOODNO
Claimant

APPEAL NO. 08A-UI-06194-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN RED CROSS
Employer

**OC: 06/01/08 R: 01
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Linda Goodno filed an appeal from a representative's decision dated June 27, 2008, reference 01, which denied benefits based on her separation from American Red Cross (ARC). After due notice was issued, a hearing was held by telephone on July 21, 2008. Ms. Goodno participated personally and offered additional testimony from Jerry Potratz and Tom Salvatore. The employer participated by Barbara Michaels, Executive Director.

ISSUE:

At issue in this matter is whether Ms. Goodno 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. Goodno began working for ARC on May 30, 2006 and worked full time as an administrative assistant. Her last day at work was May 27, 2008. She called on May 28 to report that she would be absent due to illness.

Ms. Goodno was required to report her absences to her supervisor before the start of her shift. She did not call or report for work at the scheduled 8:30 a.m. time on May 29. The employer attempted to reach her by telephone and finally called a friend of hers when she failed to answer. Ms. Goodno then sent an e-mail to a coworker at 11:04 a.m. advising that she would be absent. Neither she nor anyone acting on her behalf contacted the employer on May 30. Ms. Goodno was next scheduled to work on June 2. She did not report for work at the scheduled time and did not contact the employer until after her shift was over.

Ms. Goodno was diagnosed with diabetes and high blood pressure in March of 2008. She has been taking blood pressure medication since April of 2008. She also suffers from depression on occasion and has been taking anti-depressants since April of 2008. She spent a good deal of her time sleeping from May 28 until June 3. She got up at least once each day to use the restroom. A telephone was available on the table next to her bed. During the time she was

away from work, she understood that she still had a job and needed to contact the employer regarding her intentions.

When she spoke to the employer on the evening of June 2, Ms. Goodno was told she no longer had employment with ARC. She was told she was presumed to have quit because she was absent for three days without proper notice. Continued work would have been available if she had continued reporting for work or had notified the employer of her intentions.

REASONING AND CONCLUSIONS OF LAW:

The employer contended that Ms. Goodno was a voluntary quit because she was absent three consecutive days without notice. However, she was not absent for three days without notice as she did contact the employer on May 29, although the contact was late. The fact that she maintained some type of contact with the employer is indicative of an intention to remain in the employment. It was the employer's decision that she would not be allowed to return to work. Since the separation was initiated by the employer, it is considered a discharge.

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). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Ms. Goodno's absences beginning May 28 were all due to illness. However, the absences were not properly reported.

On May 29, Ms. Goodno contacted a coworker several hours after she was supposed to be at work. The fact that she contacted a coworker rather than her supervisor is not fatal since she had been allowed to report her absences to persons other than her supervisor in the past. However, the contact was made over two hours after Ms. Goodno should have been at work. She acknowledged that she did not attempt to contact the employer on May 30 and that she did not call until after her shift was over on June 2. The administrative law judge is not persuaded that Ms. Goodno could not have called the employer either before or shortly after the start of her shift on May 29, May 30, and June 2.

Ms. Goodno was able to call the employer on May 28. Since she was able to send an e-mail at 11:00 a.m. on May 29, she could have done so earlier in the day. Although she was sleeping a lot during the period at issue, she was up at least once per day to use the restroom. Because she understood she still had a job, she could have called the employer on those occasions when she was up on May 30 and June 2. On the whole, the evidence failed to establish good cause for not timely reporting the absences of May 29, May 30, and June 2. Therefore, all three are unexcused absences. The administrative law judge considers three consecutive unexcused absences to be excessive. Given the language in the employee handbook, Ms. Goodno knew or should have known, without benefit of prior warnings, that not contacting her employer to give timely notice of the intent to be absent was contrary to the employer's standards.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Ms. Goodno was discharged for excessive unexcused absenteeism, which is a substantial disregard of the standards an employer has the right to expect. As such, she is disqualified from receiving benefits.

DECISION:

The representative's decision dated June 27, 2008, reference 01, is hereby affirmed as to the disqualification. Ms. Goodno was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

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