

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATIE M STEWART
Claimant

APPEAL NO. 10A-UI-09570-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRIN & GROW LTD
Employer

OC: 12/20/09
Claimant: Appellant (1)

Section 96.5-2-A – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 30, 2010, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 16, 2010. Employer participated by Michael Knapp, Executive Director. Claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Michael Knapp and Employer's Exhibits 1-6.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a non-profit childcare agency located in Waterloo, Iowa. The claimant was originally hired on August 27, 2007, as temporary employee. She was promoted to a regular part-time position and then to a full-time position as a childcare assistant. The claimant was terminated on June 3, 2010, for excessive absenteeism.

The incident that led to the claimant's termination took place on June 3, 2010. The claimant was a no-call/no-show. The claimant had received prior warnings on March 11, 2010 and April 1, 2010, concerning her excessive absenteeism. A verbal warning was given in mid May 2010. On May 26, 2010, the claimant was sent a letter confirming a conversation that morning concerning her attendance. The claimant had been absent 16 of 31 scheduled days of work since April 1, 2010. The claimant was informed that she had until the next Tuesday to resolve her transportation problems and report to work as scheduled. If she failed to do so, she would be removed from the regular work schedule. (Exhibit 3) The no-call/no-show then took place on June 3, 2010.

The employer's attendance policy required an employee to call in either one hour or two hours prior to the start of the shift, depending on when the shift began. The claimant did not follow this

procedure consistently. She would either call in just prior to the start of her shift or after her shift began.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absences due to matters of "personal responsibility", e.g., transportation problems, is considered unexcused. See Higgins, supra, and 871 IAC 24.32(7). The employer has the burden of proof to show misconduct.

The employer has established misconduct. The claimant's attendance record showed that from April 1, 2010 on, she had 16 absences for 31 scheduled days of work. Mr. Knapp testified that the claimant's absences were due to a variety of reasons, notably transportation problems, childcare issues, and personal illness. Mr. Knapp also stated that not only did the claimant miss work, but she failed to comply with the employer's notification procedures. She was required to call in either one hour or two hours prior to the start of her shift depending on her start time. She would either call in at the last minute or after her shift actually began. Unscheduled absences present a particular problem for the employer since appropriate staffing levels are mandated by law. The claimant's failure to come to work and to follow her employer's notification procedure constitutes misconduct. Benefits are denied.

DECISION:

The decision of the representative dated June 30, 2010, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

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