

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAREN D FARRELL**  
Claimant

**APPEAL NO. 13A-UI-13367-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEARS ROEBUCK & CO**  
Employer

**OC: 03/03/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated November 26, 2013, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on January 21, 2014. Claimant participated. The employer participated by Mr. Justin Crick, Human Resource Manager, and Ms. Alicia Palas, Training Manager. Employer's Exhibits A, B, C, D, E and F were received into evidence. Claimant's Exhibits 1 and 2 were received into evidence.

**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 the evidence in the record, the administrative law judge finds: Karen Farrell was employed by Sears, Roebuck & Co. from March 8, 2013 until November 8, 2013 when she was discharged for excessive, unexcused absenteeism after receiving numerous warnings from the company.

At the time that Ms. Farrell was hired she was informed via orientation and the company handbook of the procedure required by Sears, Roebuck & Co. to have absences for medical reasons excused. Employees are expected to notify their immediate manager of their impending absences and if the absence is for a medical reason employees are required to call a specific number provided by the company to report the absence as an absence for a medical reason. If medical documentation is supplied the employer considers the absence to be excused. Failure to follow that procedure results in absences being considered unexcused.

Ms. Farrell was issued a Step 1 warning for unsatisfactory attendance after she had accumulated five absences. Ms. Farrell was specifically offered the option of submitting medical documentation to the centralized leave management team to have the absences excused but declined to do so. A warning was issued to the claimant on May 3, 2013. The

claimant was issued a Step 2 warning on August 2, 2013 after being absent from work on three days and tardy on two more occasions. A Step 3 warning was issued on August 10, 2013. Once again Ms. Farrell declined to submit a doctor's excuse to have absences excused. A final Step 4 warning was issued to Ms. Farrell on September 2, 2013. Ms. Farrell was discharged from her employment after she called in two hours and 15 minutes late on November 7, 2013 and arrived at work four hours and 38 minutes late. The claimant stated that she had "slept through her alarm."

Ms. Farrell had been instructed in detail on August 8, 2013 how to provide medical documentation to have her absences excused and in a personal conversation with Ms. Palas, Training Manager. Ms. Farrell acknowledged that she'd been told about the procedure for supplying documentation.

It is Ms. Farrell's position that a number of her attendance infractions were related to medical issues but that she was unaware of the procedure within the company to have absences for medical reasons excused. It is claimant's further position that she did not understand that the Step 1 through Step 4 attendance warnings were for the purpose of informing her that her employment was in jeopardy. The claimant believed that the warnings were only for the purpose of documenting the dates that she had not been at work. The claimant maintains that her final tardiness was caused by sleep apnea and beyond her control. The claimant also believes that a previous period of absence should have been condensed into one infraction and that the employer's failure to consider it to be one infraction caused her to be discharged.

#### **REASONING AND CONCLUSIONS OF LAW:**

Although sympathetic to the claimant's situation, the administrative law judge concludes that the employer has sustained its burden of proof in showing the claimant's discharge took place under disqualifying conditions.

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.

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.

In discharge cases the employer has the burden of proof. 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).

No aspect for the contract of employment is more basic than the right of the employer to expect employees will appear for work on the hour and day agreed upon and recurrent failure to honor that obligation shows a substantial disregard for the employer's interests and standards of behavior.

The claimant in this case received numerous warnings from her employer that her attendance was unsatisfactory and that unless excused, additional absences or other attendance infractions were due to the claimant's discharge from employment. The claimant was thus placed on proper notice that her employment was in jeopardy due to her absenteeism/tardiness. The employer had a policy in place that would allow employees who were absent for medical reasons to have the absences excused if they called a telephone number provided by the employer, provided medical documentation to that attendance group within the company and requested that the absence be excused. Ms. Farrell had the option of following this procedure to have absences for medical reasons excused but chose not to avail herself of it. The evidence establishes that the claimant was informed of it in orientation and in the company handbook and was also specifically instructed on the procedure by her supervisor and by Alicia Palas, the Training Manager.

The administrative law judge concludes that although some of the attendance infractions attributed to Ms. Farrell may have been excused for medical reasons, they were not deemed excused because Ms. Farrell was not willing to follow the procedure available to her within the company for having the absences excused. The claimant was given numerous opportunities to report the absences due to illness to a specific number and had been repeatedly informed that if she supplied medical documentation to calling in to the required number absences may be excused. The claimant's discharge from employment took place because the claimant was not willing to follow an available procedure that had been repeatedly recommended to her prior to her discharge. The administrative law judge thus concludes that the claimant was discharged for excessive unexcused absenteeism after being warned. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated November 26, 2013, reference 01, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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