

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTIE K SWEET**  
Claimant

**APPEAL NO. 11A-UI-12947-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AREA RESIDENTIAL CARE INC**  
Employer

**OC: 09/11/11  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Kristie Sweet, filed an appeal from a decision dated September 29, 2011, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on October 25, 2011. The claimant participated on her own behalf. The employer, Area Residential Care (ARC), participated by Human Resources Director Terri Pitzen

**ISSUE:**

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

**FINDINGS OF FACT:**

Kristie Sweet was employed by ARC from July 27, 2010 until September 12, 2011 as a part-time instructor. She was placed on a 90-day probation on August 24, 2011, because of absenteeism. Her paid leave had all been exhausted due to personal and family illness. The probation advised her that she would be discharged if there were any further incidents of absenteeism or violation of any other rules.

Ms. Sweet was tardy to work on September 2, 2011, due to transportation problems, but no further disciplinary action was taken. On September 8, 2011, Supervisor Amy Lang “discovered” a picture frame the claimant had decorated using company materials. The picture frame was made by a client who then gave it to Ms. Sweet. The claimant then decorated it with her children’s names, using paint belonging to ARC. It had been in a public area in plain sight for over two months. When the claimant was questioned about it the next day she admitted to having been given the picture frame after the client made it and did use ARC paint to decorate it. She was discharged on September 12, 2011, by Ms. Lang and Human Resources Director Terri Pitzen.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

The claimant was discharged for violation of the probation. But the final incident of tardiness occurred ten days before she was discharged. The additional infraction regarding the picture frame had occurred at least two months prior to the discharge and the item had been plainly visible in a public area during that entire time. 871 IAC 24.32(8) requires a current final act of misconduct to precipitate the discharge before disqualification may be imposed. Neither the incident of the final tardy nor the picture frame matter were current incidents. For that reason alone disqualification may not be imposed.

**DECISION:**

The representative's decision of September 29, 2011, reference 01, is reversed. Kristie Sweet is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs