

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JODI L ACHEY**  
Claimant

**APPEAL NO. 13A-UI-04636-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 07/22/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from the representative's decision dated April 11, 2013, reference 03, which held that the claimant was eligible for unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on May 20, 2013. The claimant participated personally. The employer participated by Brandi Whittenbaugh, Staffing Consultant. The record consists of the testimony of Brandi Whittenbaugh and the testimony of Jodi Achey.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer is a temporary employment agency. The claimant worked for the employer from October 21, 2012 through March 17, 2013. During that twenty-two week period, the claimant worked only six full forty hour weeks. The claimant's final absence was March 20, 2013. She had a doctor's appointment for an ongoing health concern of abdominal pain. The claimant had been off sick on March 13, 2013; March 14, 2013; and March 15, 2013, for this abdominal pain. The claimant had been off work previously for other health problems including diabetes; neck pain; and headaches.

**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). The concept includes tardiness and leaving early. Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See *Higgins*, supra, and 871 IAC 24.32(7) In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8) See also *Greene v. EAB*, 426 N.W.2d 659 (Iowa App. 1988) The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The claimant clearly had excessive absenteeism but the evidence showed that her absenteeism was due to personal illness properly reported. Under Iowa law, personal illness properly reported is considered an excused absence. This means that the claimant's absenteeism does not disqualify her from receiving benefits. Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The unemployment insurance decision dated April 11, 2013, reference 03, is affirmed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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