

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**CONNIE J EMGARTEN
711 GUTHRIE ST
ADAIR IA 50002-1127**

**THE IOWA CLINIC PC
1215 PLEASANT STE 618
DES MOINES IA 50309-1416**

**Appeal Number: 06A-UI-07655-DWT
OC: 10/02/05 R: 01
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Connie J. Emgarten (claimant) appealed a representative's July 24, 2006 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits, and the account of The Iowa Clinic PC (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 14, 2006. The claimant participated in the hearing. Marian Klein and Karen Bachman appeared on the employer's behalf. Based on the evidence, the arguments of the parties and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 21, 2006. The claimant worked as a full-time coding and billing specialist. Bachman was the claimant's supervisor. At the time of hire, the employer informed the claimant that the employer's attendance policy expected employees to report to work as scheduled and on time.

During her three-month evaluation on May 9, 2006, Bachman informed the claimant that her attendance had to improve because she had not yet worked a week without an absence. Bachman warned the claimant that if she did not work two of the next three 80-hour pay periods as schedule, she could be discharged. Bachman also told the claimant that she was required to personally contact Bachman when Bachman was in town and the claimant could contact other people who Bachman identified when Bachman was out of town.

Subsequent to May 9, the claimant was absent from work a number of days as a result of a medical condition that she had previously told Bachman about. On June 25, the claimant's significant other's vehicle was in an accident and was damaged. He had recently started a new job and could not take time off to get an estimate on the damage. On June 26, the claimant left a message for the employer that she was unable to report to work because she had to get estimates on a vehicle that had been involved in an accident the day before. The claimant did not contact Bachman even though Bachman was in town. On June 30, 2006, the employer discharged the claimant because of continued excessive unplanned and unexcused absences.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8). The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty

to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

As of May 9, 2006, the claimant knew or should have known her job was in jeopardy for excessive absenteeism. Even though the claimant knew her job was in jeopardy, the claimant made the decision to be absent from work on June 26 so she could get an estimate on how much it would cost to repair the damage on her significant other's vehicle. The vehicle had been involved in an accident the day before. While it is understandable that the claimant and her significant other wanted an estimate as soon as possible, there is nothing in the evidence indicating the estimates had to be done on June 26. This was not an emergency situation.

The claimant asserted she planned to make up the time she missed on June 26, but she did not talk to the employer on June 27 when she returned to work about making up time she was absent on June 26. Finally, the claimant even failed to personally contact Bachman on June 26 even though she had been instructed to do so on May 9, 2006.

The claimant's failure to properly notify Bachman about her June 26 absence in addition to the fact the claimant was absent from work for an unexcused reason and could have made other arrangements indicates the claimant intentionally failed to work as scheduled on June 26 and substantially disregarded the employer's interests. The claimant's failure to work as scheduled on June 26, 2006, after being warned her job was in jeopardy for attendance issues constitutes work-connected misconduct. As of July 2, 2006, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 24, 2006 decision (reference 03) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 2, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/cs