**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**SARAH M PIZANO**
Claimant

**APAC CUSTOMER SERVICES OF IOWA**
Employer

**APPEAL NO: 13A-UI-01847-DT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 01/20/13**
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Sarah M. Pizano (claimant) appealed a representative's February 15, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from APAC Customer Services of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 9, 2013. The claimant participated in the hearing. Turkessa Newsome appeared on the employer's behalf and presented testimony from one other witness, Sandra Long. 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**:

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 26, 2011. She worked full time as a customer service representative in the employer's Davenport, Iowa call center. Her last day of work was December 27, 2012. The employer considered the claimant to have voluntarily quit by job abandonment as of January 2, 2013. Alternatively, had the claimant reported in for work either late on December 31, 2012, or on January 1 or January 2, 2013, she would have been discharged for excessive absenteeism.

The claimant's work schedule was from 7:00 a.m. to 5:30 p.m., Monday through Thursday. The employer's attendance policy provides for discharge if an employee exceeds five occurrence points in a six-month period. On December 5 the employer gave the claimant a "reinforced final warning" for attendance, indicating that she had six attendance occurrence points since June 2012. None of those attendance occurrence points fell off the claimant's attendance record by December 31, 2012.

Of the six attendance occurrence points as of December 5, one point was for a four-day absence due to illness, and four were for various tardies, four for tardies of less than two hours, assessed at a half-point each, and two for tardies of over two hours, assessed at a point each. The additional point was unspecified.

On the night of December 30 the claimant had stayed at the home of a relative, as she did not have a permanent home at that time. The relative was about a half-hour further away from the employer than the ten minutes away where the claimant had previously been staying. On the morning of December 31 the claimant overslept. She called the employer at about 8:00 a.m. and spoke to a different team leader than her own immediate supervisor, Long. She told this other team leader that she was running late but would be in. She called the team leader back at about 9:00 a.m. to report that she would not be in at all, that while on her way into work she had gotten a call that her father had been hospitalized with a heart issue, and that she would be absent that day because of the family emergency. She indicated she would either be into work the next day, January 1, or she would call back in to speak to the team leader.

The employer was not notified of the claimant's conversation with the team leader on December 31 and considered it to be a no-call, no-show. The claimant was again absent on January 1 and January 2; she indicated that she had made multiple attempts to contact the employer but that the phone system was not working. The employer considered the claimant to be a no-call, no-show on those days as well. The employer therefore considered the claimant's employment to have ended under its three-day no-call, no-show policy. On January 3, 2013 the claimant called and spoke to Long; Long informed the claimant that her employment was ended. While Long was relying on the assumption that the claimant had been a three-day no-call, no-show, had the employer been aware that the claimant would have been tardy on December 31 even before learning of her father's illness, it still would have considered the claimant's employment ended for excessive absenteeism and tardiness.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). However, an intent to quit can be inferred in certain circumstances. For example, a three-day no-call, no-show in violation of company rule can be treated as a voluntary quit. 871 IAC 24.25(4). However, in this case the evidence establishes that the claimant did call in on December 31. The claimant did not evidence an intent to quit. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive and unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). Tardies are treated as absences for purposes of unemployment insurance law. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). The presumption is that oversleeping is generally within an employee's control. *Higgins*, supra. Absences or tardies due to issues that are of purely personal responsibility are not excusable. *Higgins*, supra; *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984). The claimant had prior excessive unexcused tardies. Even if the remainder of the absence on December 31, 2012 and her absences on January 1 and January 2, 2013 due to her father's illness might have been considered excused, her final tardy prior to 9:00 a.m. on December 31 was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future occurrences could result in termination. *Higgins*, supra. The employer effectively discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's February 15, 2013 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of January 3, 2013. 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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