

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MAGGIE PEWE**  
Claimant

**APPEAL NO: 18A-UI-09435-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GENESIS HEALTH SYSTEM**  
Employer

**OC: 08/12/18**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Maggie Pewe, the claimant, filed a timely appeal from a representative's unemployment insurance decision dated August 30, 2018, (reference 01) which denied unemployment insurance benefits finding that the claimant was discharged on August 14, 2018 for repeated tardiness and reporting late to work after being warned. After due notice was provided, a telephone hearing was held on September 27, 2018. Claimant participated. Employer participated by Ms. Renee Stolmeier, Director of Human Resources.

**ISSUE:**

The issue is whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Maggie Pewe was employed by Genesis Health System from April 14, 2003 until August 14, 2018, when she was discharged from employment. Ms. Pewe was employed as a full-time registered nurse and was paid by the hour. Her immediate supervisors were Dan Ludgate and Joel Moore.

Ms. Pewe was discharged from her employment with Genesis Health System on August 14, 2018 after she reported to work without swiping her employee badge on the company's system, or verifying her presence at work by being at her work area so her arrival time could be verified by other personnel, as required by policy. Ms. Pewe had received a final warning from Genesis Health System on June 19, 2018 for excessive tardiness and had been warned that any further tardiness could result in her termination from employment.

On the morning of August 14, 2018, Ms. Pewe had a transportation problem and called her supervisor at approximately 7:12 a.m. to inform her of the transportation issue. When the claimant did not punch in by 7:52 a.m. and had not been observed in her work area until after 8:00 a.m., the employer reasonably concluded that Ms. Pewe had again not arrived to work on

time. Ms. Pewe was discharged based upon the employer's attendance and punctuality policy as well as the previous warnings that had been served upon Ms. Pewe for repeated tardiness.

Ms. Pewe was called to a disciplinary meeting with Renee Stolmeier, Dan Ludgate, her supervisor, and a physician present. During the discharge meeting, Ms. Pewe made an admission that she had arrived at work late that day and further stated that after she had arrived and found that her badge was not working, she went to a nearby bathroom for a time because she anticipated discharge, and was feeling ill. Genesis Health System policy requires employees that are unable to punch in because of a badge issue, to verify their timely arrival at work by reporting to their work area where their presence at work can be verified by supervisors or other employees. Employees who follow the procedure are issued a new identification badge if the old badge is inoperable. Employees who forget their badges are required to pay a fee for a new badge and are considered a late arrival.

Genesis Health System's established policy provides for the termination of employees who accumulate 12 instances of tardiness in a one year rolling period. The employees are aware of the policy because it is in the handbook and available online. Employees are also reminded of the policy in the warnings that are served on employees with attendance infractions.

On October 26, 2017, Ms. Pewe was given a verbal warning by Joel Moore and advised that she needed to be at work at the starting time for her work shift. On April 17, 2018, Ms. Pewe was issued a first written warning for excessive tardiness. Because the warning had not been issued to the claimant when she had accumulated six tardies, but delayed by her supervisor until the claimant had accumulated nine tardies the employer in effect, forgave the three previous tardies but warned the claimant that additional tardiness would lead to further disciplinary actions. Claimant's supervisor also reviewed the company's policies and the employer's expectations with Ms. Pewe at that time. On May 8, 2018, Ms. Pewe was issued her second written warning for additional punctuality infractions on April 24 and May 8, 2018. The claimant did not dispute her tardiness on the warning. On June 19, 2018, Ms. Pewe was issued her third and final punctuality warning for late arrivals on May 9 and June 18, 2018. Ms. Pewe did not dispute the number of infractions that she had been accumulating and was warned that any further punctuality infractions could result in her termination from employment. The claimant's failure to punch in on the morning of August 14, 2018 by 7:52 a.m. or to verify to her timely attendance at work by front desk employees resulted in her 15th late arrival at work between March 27, 2018 and her discharge date August 14, 2018. Ms. Pewe exceeded the permissible number of later arrivals in a rolling one year period even though the employer had forgiven three punctuality infractions earlier that year.

In an earlier effort to accommodate Ms. Pewe's punctuality issues, the claimant had been allowed to report to work at 7:45 a.m. instead of the 7:30 a.m. required for other nursing personnel. In a further attempt to accommodate Ms. Pewe, the employer had also been giving her a seven minute "grace period" by her supervisor, and claimant would not be late if she clocked in or verified her presence at work was verified by 7:52 a.m.

Ms. Pewe asserts that although she had called her supervisor on the morning of August 14, 2018 to report that she would be late due to transportation problems, she nevertheless reported to work on time and the malfunction of her identification badge prevented her from clocking in. Ms. Pewe further asserts that she called her department at 7:52 a.m. on the morning of August 14, 2018 and at that time verified that she was present and at work. It is the claimant's further belief that although accommodations that had been given to her by her supervisors, she did not know that she was expected to clock in or verify her attendance by 7:52 a.m. It is

Ms. Pewe's belief that her late arrivals should have been forgiven because she was not aware of the employer's expectations.

The claimant did not dispute the number of punctuality infractions that were noted by the employer on the warnings that were served on her and did not use the space provided on each warning to offer any explanations, denials, or to request for a review of the infractions by the organization's human resource department. At the time she was being discharged, Ms. Pewe did not refute the base or indicate that she had notified anyone in her department of her timely arrival.

It is also the claimant's belief that she was not discharged for repeated tardiness but because she had been proactive in bringing an issue to the company's human resource department in the past.

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

The question before the administrative law judge is whether the evidence in the record establishes job-related misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct as defined by the Employment Insurance law. See Iowa Code § 96.5(2)a and *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct must be substantial in order to justify the denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment 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. App. 1992).

No aspect of the contract of employment is more basic than the right of the employer to expect employees report for work on the day and hour agreed upon and re-occurrent failure to honor that obligation shows a disregard of the employer's interests and standards of behavior that the employer has a right to expect of its employees under the provisions of the Iowa Employment Security law.

In the case at hand, Ms. Pewe was considered to an exemplary registered nurse however, the claimant was discharged because she had been excessively tardy in reporting for work after being warned on numerous occasions. The employer had made accommodations to the claimant, first allowing her to report at 7:45 a.m. instead of the 7:30 a.m. start time for other nurses, and later her supervisor had also granted Ms. Pewe an additional seven minute "window" to clock in thus making 7:52 a.m. the time the claimant needed to be at work and clocked in. Any arrivals after 7:52 a.m. were considered to be late arrivals, and subjected the claimant to further disciplinary actions. The employer forgave three instances of tardiness. Claimant was aware that in the future when she reported to work late, the late arrivals would still be considered as infractions by the employer. Ms. Pewe did not dispute her warnings nor indicate any extenuating circumstances on the portions of the warning forms that were available for these purposes.

The claimant continued to report to work later than 7:52 a.m. and received additional warnings from the employer on May 8, 2018 and June 19, 2018. The warning was given to Ms. Pewe on June 19, 2018 was a final warning and placed her on notice that any additional late arrivals at work would subject her to termination from employment. The claimant was discharged after she reported to work late on August 14, 2018 and had not followed the alternative procedure of having her timely arrival verified by personnel in her department.

The claimant admitted during her discharge meeting that she had arrived to work late. The claimant made no mention of contacting her department on or before her beginning time for her shift that morning.

For the above stated reasons, the administrative law judge concludes that the employer has sustained its burden of proof by a preponderance of the evidence establishing that the claimant was discharged for repeated tardiness and reporting to work after reasonable and repetitive warnings. Accordingly, the claimant is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

**DECISION:**

The representative's unemployment insurance decision dated August 30, 2018, reference 01 is affirmed. Claimant was discharged for work-connected misconduct. Unemployment insurance benefits are withheld until she 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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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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