

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAROLE J YOUNG**  
Claimant

**APPEAL NO. 09A-UI-10327-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE COUNTY**  
Employer

**OC: 05/31/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Carole Young filed an appeal from a representative's decision dated June 30, 2009, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on August 6, 2009. The claimant participated personally. The employer participated by Gayla Rooarig, Director of Nursing and Amy Bemis. Employer's Exhibits One through Six were received into evidence.

**ISSUES:**

The issues are whether the claimant's appeal was timely and whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony and having considered all of the evidence in the record, finds: Ms. Young filed an appeal ten days beyond the statutory time limit because she was recuperating from surgery and had not been able to change her address of record. The claimant filed an appeal as soon as it was brought to her attention by Workforce Development employees that a decision adverse to her had been issued.

Ms. Young was most recently employed as a full-time certified nursing assistant for the Dubuque County, doing business as Sunny Crest Manor. The claimant was employed from December 18, 2006 until June 1, 2009 when she was discharged from employment. During the course of her employment Ms. Young had often been absent or tardy. The majority of the claimant's attendance infractions were related to illness. Ms. Young reported each impending absence properly. The employer became increasingly dissatisfied due to the number of absences caused by the claimant's health conditions. The employer was also dissatisfied as the claimant was at times tardy due to providing care ill children. The employer also had concerns as the claimant at times lost paperwork and had not attended workmen compensation doctors' appointments because the claimant had chose to report to work instead. The claimant

was discharged on June 1, 2009, two days after being returned to full duty by her physician. The claimant had been on limited duty due to a workmen's compensation claim for an extended period. No disqualifying event took place at or near the time of discharge.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons which follow the administrative law judge concludes the claimant was discharged for no current of disqualifying misconduct.

The employer bears the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify the denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant the denial of unemployment insurance 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).

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 acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

In this case the claimant has demonstrated good cause for late filing of her appeal. The claimant's appeal was delayed as she had not received the fact-finders decision because of illness and her inability promptly have her address of record changed.

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.

The evidence in the record establishes that the claimant was not discharged for a current act of misconduct. During the weeks preceding the claimant's discharge, the claimant had not been absent or tardy and had no disqualifying event. The employer had chosen for its own reasons, to delay the decision to terminate the claimant until Ms. Young had been fully released from a previous workmen's compensation claim. In the past the claimant had been absent on numerous occasions. Her absences were related to illness and had been properly reported.

The Supreme Court of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism was one form of misconduct. The Court further held, however, that absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer.

For the above-stated reasons the administrative law judge concludes that the claimant was discharged for no current disqualifying reason. Benefits are allowed providing the claimant meets other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated June 30, 2009, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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