

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**MARTHA K TAYLOR**  
Claimant

**LIFE CONNECTION LLC**  
Employer

**APPEAL NO. 14A-UI-07916-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/06/14**  
**Claimant: Appellant (1)**

---

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated July 22, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 21, 2014. Claimant participated personally. Employer participated by Emily Forseth, BHIS Supervisor and Moon Chaplin, CEO.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on July 1, 2014.

Employer discharged claimant on July 1, 2014 because claimant failed to report to work on June 24; June 25 and June 26. Claimant was at work on June 24 and left early after ordered to sign a probation form. Claimant left after refusing to sign the probation notice. Employer demanded that claimant come back and sign a probation form. Claimant did not call in or report for work even after notice by employer to come in for a meeting on either the 24th 25th or 26th. Employer only needed 15 minutes of claimant's time where no other work was scheduled. Claimant chose not to respond. Employer's policy deems three no-call absences as a voluntary quit or discharge at employer's discretion.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. 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.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. The Iowa Supreme Court has opined that one unexcused absence is not misconduct even when it followed nine other excused absences and was in violation of a direct order. Sallis v. EAB, 437 N.W.2d 895 (Iowa 1989). Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984), held that the absences must be both excessive and unexcused. The Iowa Supreme Court has held that excessive is more than one. Three incidents of tardiness or absenteeism after a warning has been held misconduct. Clark v. Iowa

Department of Job Service, 317 N.W.2d 517 (Iowa Ct. App. 1982). While three is a reasonable interpretation of excessive based on current case law and Webster's Dictionary, the interpretation is best derived from the facts presented.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning absenteeism. Claimant was informed concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant chose to ignore three chances to meet with her employer over work schedules. The absences are not excusable. Claimant did not report even though she had no other work to perform. This is both excessive absenteeism and insubordination. Claimant was ordered to come to work to discuss her schedule and sign acknowledgment of receipt of the probation form. Claimant chose to not come in. There is no viable excuse in not stopping in at work for 15 minutes. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated July 22, 2014, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

---

Marlon Mormann  
Administrative Law Judge

---

Decision Dated and Mailed

mdm/pjs