

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA A WATTS**

Claimant

**APPEAL NO: 13A-UI-04046-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BERTCH CABINET MFG INC**

Employer

**OC: 03/17/13**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated April 2, 2013, reference 01, that held she was discharged for excessive excused absenteeism on December 6, 2012, and benefits are denied. A telephone hearing was held on May 8, 2013. The claimant, and Attorney, Benjamin Roth, participated. Mitzi Tann, HR Director, Mark Melcher, Benefits Coordinator, and Theron Montgomery, Department Leader, participated for the employer. Employer Exhibits 1, 2, 3 & 4 were received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the stipulation of the evidence in the record finds: The claimant began employment on September 6, 1999 and last worked for the employer as a full-time solid panel machine operator/sizing & veneer apprentice on September 6, 2012. Claimant was granted medical leave/FMLA for health issues and surgery on September 7 and she was granted short-term disability. The employer discharged claimant effective December 6 when her FMLA expired and she was unable to return to work without restriction. Claimant received an unrestricted medical work release from her doctor effective March 18, 2013.

The employer does not contest claimant's employment separation issue that makes her eligible for employment benefits and it acknowledges the doctor's release to return to work without restriction for March 18, 2013.

## REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on December 6, 2012.

The administrative law judge further concludes claimant meets the availability requirements of the law effective March 17, 2013.

The employer is not contesting the employment separation issue as it needed to replace claimant when her medical/FMLA ended and she was not released to return to work. Since claimant delayed her UI claim to March 17, 2013 when she was released to return to work on March 18, she has satisfied the availability requirements of the law.

**DECISION:**

The department decision dated April 2, 2013, reference 01, is reversed. The claimant was not discharged for misconduct on December 6, 2012. Claimant is able and available for work effective March 17, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs