

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHASITY D BROWN**  
Claimant

**APPEAL NO. 11A-UI-12646-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JB HUNT TRANSPORT INC**  
Employer

**OC: 04/03/11  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a representative's decision dated September 19, 2011, reference 04, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on October 18, 2011. The claimant participated. The employer participated by Mr. John Fiorelli, hearing representative, and witness Mr. Greg Jones, director.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Chasity Brown was employed by J.B. Hunt Transport, Inc. from May 2, 2011, until August 25, 2011, when she was discharged from employment. Ms. Brown worked as a full-time transportation representative.

Ms. Brown was discharged when the employer considered her absences from work to be excessive. The claimant had received a verbal warning on June 10, 2011, and a written warning about her attendance on June 30, 2011. The claimant had been warned not only about attendance, but also errors in her work.

During the weeks preceding the claimant's discharge, Ms. Brown had attempted to improve her work performance and had been reassured by the employer that her work performance was improving. The decision was made to terminate Ms. Brown from her employment after she left work early on August 23, 2011, due to illness, and was unable to report to work on August 24, due to illness. The claimant obtained doctor's notes to excuse her absences on those days and properly notified the employer of her need to leave work early and of her impending absence. During the claimant's most recent absence, the employer had the opportunity to review her work and found an additional error.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 employer has the burden of proof in establishing disqualifying job misconduct. See Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. See Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). When based upon carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. See Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. See Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

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 is a form of misconduct. The Court held that the absences must both be excessive and unexcused and that the concept includes tardiness, leaving early, etc. The Court further held, however, that absence due to

illness and other excusable reasons is deemed excused if the employee properly notifies the employer.

In this case, the evidence establishes that the claimant was discharged based upon her final attendance infractions that took place on August 23, and 24, 2011. The evidence shows that the claimant was ill and properly reported her leaving early and impending absence to the employer and that the claimant's inability to report for work was verified by a doctor's note. The evidence in the record does not establish that a final error found in the claimant's work was due to "wrongful intent" or that the claimant's carelessness or negligence was of such a wanton degree as to manifest culpability sufficient to warrant the denial of unemployment insurance benefits.

While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the employer has not sustained its burden of proof in establishing misconduct sufficient to disqualify her from receiving unemployment insurance benefits. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated September 19, 2011, reference 04, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

kjw/kjw