

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SIEDAH L STEWART
Claimant

APPEAL NO. 11A-UI-09715-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEAVER ENTERPRISES LTD
Employer

OC: 07/14/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated July 14, 2011, reference 01, that held she was discharged for excessive unexcused absenteeism/tardiness on April 20, 2011, and benefits are denied. A hearing was held on August 15, 2011. The claimant did not participate. Cory Van Voorhis, Area Supervisor, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant worked as a part-time house team member from May 28, 2010 to April 20, 2011. The employer issued claimant a written warning for being late to work on October 15, 2010 with an admonition that a further occurrence could lead to employment termination. When claimant was late to work more than one-hour on April 20, 2011 she was discharged. The employer gave consideration to claimant giving notice she was quitting employment due to moving to the Chicago area.

The claimant failed to respond to the hearing notice.

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(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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge concludes the employer did establish misconduct in the discharge of the claimant on April 20, 2011, for excessive "unexcused" tardiness.

The employer issued claimant a formal warning for tardiness and when she was excessively late for her April 20, 2011 work shift, she was discharged for job disqualifying misconduct.

DECISION:

The decision of the representative dated July 14, 2011, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on April 20, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css