

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 06A-UI-02347-SWT
OC: 02/05/06 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 20, 2006, reference 01, that concluded the claimant's discharge was for work-connected misconduct. A telephone hearing was held on March 15, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Amy Victor participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer from October 31, 2005, to January 31, 2006. She was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination after five attendance occurrences.

The claimant received her first occurrence on November 11, 2005, after she was absent due to an emergency surgery involving her daughter. She received her second occurrence on January 17, 2006, because she was sick and unable to work. She received her third occurrence on January 27, 2006, after she went to the hospital because her father had sustained a massive heart attack, which was considered a life-threatening situation. The claimant notified the employer about each of these absences.

On February 1, 2006, the claimant took a vacation day to take her 16-year-old daughter to Iowa City for medical treatment. Her daughter lives in Marshalltown with the claimant's mother. The claimant drove back to Marshalltown on February 1, and as she was getting ready to leave to go back to Waterloo so she could report work the next day, her car would not start. After the claimant replaced the battery in the car and it still would not start, a mechanic determined that the alternator needed to be replaced. The alternator was not in stock and had to be ordered. As a result, the claimant was absent from work on February 2 and 3 because she had to wait until the car was fixed before returning to Waterloo. She tried to find another way back to Waterloo, which is 58 miles away from Marshalltown, but she was unsuccessful in finding a ride back. The claimant notified the employer on February 2 and 3 that she was stuck in Marshalltown with car problems and would not be at work.

The employer discharged the claimant on February 6, 2006, for violation of the employer's attendance policy because she was given a fourth point for missing work on February 2 and a fifth point for missing work on February 3.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(7) provides:

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 Iowa Supreme Court has ruled that: "Habitual tardiness or absenteeism arising from matters of purely personal responsibilities such as transportation can constitute unexcusable misconduct." Harlan v. Iowa Dept. of Job Service, 350 N.W.2d 192, 194 (Iowa, 1984). The facts in this case, however, are quite different from the Harlan case. The claimant's absences prior to February 2 were all for legitimate medical reasons and were properly reported. Her absences on February 2 and 3 were due to car problems beyond her control and were properly reported. She did not have a previous history of missing work due to car problems. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case.

DECISION:

The unemployment insurance decision dated February 20, 2006, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/kkf