

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINE C CARVER
Claimant

APPEAL NO. 10A-UI-00156-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LONG LINES LLC
Employer

OC: 11/29/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 22, 2009, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on February 11, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Lisa Osborn participated in the hearing on behalf of the employer with a witness, Stormie Westphal. Exhibits One through Seven were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a customer services representative from July 21, 2008, to November 27, 2009. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled and were subject to termination after 12 attendance occurrences.

She was warned about her excessive absences and tardiness on December 23, 2008, and July 24, July 29, September 10, September 16, October 2, and October 23. Although several of her occurrences were due to her own illness or her child's illness and were properly reported, they also included six instances of unexcused tardiness. The claimant had 12 attendance occurrences on October 2 and 13 occurrences on October 20, but the employer gave her another chance each time.

On November 24, 2009, the claimant was 12 minutes late for work because of delays getting to work due to the weather. She did not leave home early enough to arrive at work on time considering the weather and road conditions.

The employer discharged the claimant on November 27, 2009, due to repeated absences and tardiness despite multiple warnings.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

While the claimant's absences were for medical reasons, her repeated unexcused tardiness was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. The claimant knew her job was in jeopardy, yet failed to give herself enough time to get to work on time on November 24.

DECISION:

The unemployment insurance decision dated December 22, 2009, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs