

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VERLITA M DUNN**

Claimant

**APPEAL NO. 14A-UI-02448-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMEDY INTELLIGENT STAFFING INC**

Employer

**OC: 02/09/14**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated February 28, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 26, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Vicky Matthias participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked full time on an assignment at Omega Cabinets from September 13, 2013, to January 23, 2014.

The claimant was absent from work on November 6, November 19 and 20 (husband was ill and required surgery), December 4 (claimant was ill), December 18 and 19 (claimant was ill), January 15 (claimant's car would not start), and January 24 (claimant was ill). She properly notified the employer regarding her absences. The claimant was also late eight times. The last time she was late was on January 15 when she was one minute late. The claimant was never counseled or warned about her attendance.

After the claimant was absent on January 24, 2014, Omega Cabinets decided not to hire the claimant as its employee and instructed the employer to remove her from the assignment due to attendance.

The claimant has kept in contact with the employer since the assignment at Omega Cabinets ended regarding additional assignments.

**REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

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

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).

The unemployment insurance rules provide: "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." 871 IAC 24.32(7). The unemployment insurance rules also provide: "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(8).

No current act of willful and substantial misconduct has been proven in this case. The claimant's absences, including her final absence, were due to illness or other legitimate reasons and were properly reported.

**DECISION:**

The unemployment insurance decision dated February 28, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs