

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA L HARRIS**  
Claimant

**APPEAL NO. 10A-UI-06910-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARLEY'S & SATHERS CANDY CO INC**  
Employer

**OC: 04/11/10**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Jessica Harris, filed an appeal from a decision dated May 7, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 23, 2010. The claimant participated on her own behalf. The employer, Farley's, participated by Human Resources Manager Robin Beech-Travis.

**ISSUE:**

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

**FINDINGS OF FACT:**

Jessica Harris was employed by Farley's from November 5, 2007 until April 15, 2010 as a full-time machine operator on the first shift. She received a copy of the employee handbook and knew the attendance and progressive disciplinary procedures. Employees who accumulate eight points in a rolling nine-month period are subject to discharge under the no-fault policy. The employer posts the point total for all employees, anonymously by worker identification number, every week.

Ms. Harris received regular written warnings for each of her attendance issues. Since January 2010, she had accumulated points for leaving early. Most of these were due to taking her infant to the doctor, even though the child's father was available, and his job was not in jeopardy, to perform this errand.

The final warning was given on April 8, 2010, for leaving more than four hours early on March 30, 2010. At that time she had 7.5 points. On April 15, 2010, she was 30 minutes late to work, without calling to notify the employer, due to oversleeping. This resulted in another 1.5 points being added to her total and she was over the eight points allowed. When she arrived at work she was discharged by Human Resources Manager Robin Beech-Travis.

## 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(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.

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 claimant was discharged for excessive absenteeism. It appears most of the final points were accumulated when she left early to go to medical appointments with her infant. This was not necessary as the child's father was available to do this errand and his job was not in jeopardy as a result of absenteeism. Her choice to take the time off from work for non-emergency situations is essentially a lack of child care. But the final incident was due to oversleeping. Matters of purely personal consideration, such as lack of child care and oversleeping, are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984).

The record establishes the claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

**DECISION:**

The representative's decision of May 7, 2010, reference 01, is affirmed. Jessica Harris is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs