

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHELBY L NAUMAN**  
Claimant

**APPEAL NO. 16A-UI-11050-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BIOLIFE PLASMA LLC**  
Employer

**OC: 09/18/16**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Biolife Plasma LLC filed a timely appeal from a representative's decision dated October 4, 2016, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 26, 2016. Claimant participated. The employer participated by Ms. Jennie Brown, Center Manager, and Ms. Tina Wagner, Assistant Manager.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Shelby Nauman was employed by Biolife Plasma, LLC from August 29, 2005 until September 19, 2016 when she was discharged from employment. The claimant was last employed as a full-time Center Supervisor and was paid by the Iowa. The claimant reported to Jennie Brown, the Center Manager.

Ms. Nauman was discharged on September 19, 2016, when she exceeded the permissible number of infractions allowed under the company's attendance and tardiness policies. Under the company policy, employees receive one infraction point for each day that they miss unless they supply a doctor's note. After accumulating four infraction points, an employee is issued a memo by the company. Employees are given a first written warning when they accumulate five infraction points and a final warning when they reach six points. Termination takes place when seven points are reached. Under the company's punctuality policy, employees are assessed one tardy occurrence point for being six minutes to one hour late and receive two tardy occurrence points if they are one hour to four hours late. Employees receive memos and warnings when they accumulate 6, 8, and 11 points and are subject to discharge if they accumulate 12 infraction points.

On Thursday, September 15, 2016, Ms. Nauman was issued a final warning for tardiness and attendance. The claimant's job performance was also discussed in a meeting held that day. Ms. Nauman signed the warnings regarding her attendance violations but the warning that the employer planned to give Ms. Nauman for performance issues was not available during the meeting and the claimant was told that she would have an opportunity to sign that warning before she left work that day.

Prior to the performance warning being given to the claimant to sign, Ms. Nauman became ill with what she described as a "panic attack." Ms. Nauman left work approximately one and one-half hours early that day after informing another supervisor. When questioned later by the employer the supervisor indicated that she did not know the claimant's whereabouts.

Ms. Nauman called off work on Friday, September 16, 2016 because she continued to be ill. The following Monday, September 19, 2016 Ms. Nauman again called off work due to illness.

The employer believed that Ms. Nauman had left work on the preceding Thursday without properly informing management that she was leaving. Because Ms. Nauman had called off work on two additional occasions following her final warning for attendance, she was discharged for exceeding the permissible number of attendance infractions allowed under company policy.

**EASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes intentional, disqualifying misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(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 employer has the burden of proof in discharge cases to establish disqualifying conduct sufficient to warrant the denial of unemployment insurance benefits. See Iowa Code section 96.5(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

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 upon such past acts. The termination of employment must be based on a current act. See 871 IAC 24.32(8).

Although hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as firsthand, sworn, direct testimony provided that the firsthand testimony is credible and not inherently improbable.

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires the consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation or oversleeping are considered unexcused. Absences related to illness are considered excused providing the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that Ms. Nauman did follow the company's attendance policy in connection with her absences on September 15, 16 and 19, 2016. The claimant testified under oath that she did notify another supervisor before leaving work early on Thursday, September 15, 2016 and the evidence establishes the claimant provided the required notice to the employer on Friday, September 16, and on Monday, September 19, 2016 by calling in and reporting her absence due to illness.

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. The employer's no fault absenteeism policy is not dispositive of the qualification for benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant was discharged under non disqualifying conditions. Accordingly, the claimant is eligible to receive unemployment insurance benefits, providing that she is otherwise eligible.

**DECISION:**

The representative's decision dated October 4, 2016, reference 01, is affirmed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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