

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNA WIEGAND

Claimant

APPEAL NO: 12A-UI-13512-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AT&T MOBILITY SERVICES LLC

Employer

OC: 10/14/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jenna Wiegand (claimant) appealed a representative's November 5, 2012 decision, (reference 01), that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from AT&T Mobility Services, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 11, 2012. The claimant participated in the hearing. Margaret Barnes of TALX Employer Services appeared on behalf of the employer and presented testimony from one witness, Carla Pohren. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 31, 2010. She worked part time (about 28 hours per week) as a retail sales consultant at the employer's West Des Moines, Iowa store. Her last day of work was October 20, 2012. The employer discharged her on that date. The reason asserted for the discharge was unacceptable attendance.

The employer's attendance policy provides for discharge if an employee reaches seven attendance points. The employer considered the following occurrences in determining to discharge the claimant:

Date	Occurrence/Reason	Points assessed/cum.
05/12/12	Absence, sick.	1.0 / 1.0
06/24/12	Absence, sick.	1.0 / 2.0
08/28/12	Late, ≤ 15 min.	.25 / 2.25
09/04/12	Late, ≥ 31 min.	.75 / 3.0
09/06/12	Late, ≤ 30 min.	.5 / 3.5
09/09/12	Absence, sick.	1.0 / 4.5

09/11/12	Late, ≤ 15 min.	.25 / 4.75
09/13/12	Late, ≤ 30 min.	.5 / 5.25
09/20/12	Late, ≤ 15 min.	.25 / 5.5
09/22/12	Late, ≥ 31 min.	.75 / 6.25
10/16/12	Late, ≥ 31 min.	.75 / 7.0

The claimant's tardies starting in August 2012 were because she had started a school schedule at the university in Ames, Iowa that required her to have a lab class on Tuesday afternoons that occasionally ran longer than 3:00 p.m., resulting in her being late to report for work in West Des Moines. Her start time had originally been 4:30 p.m., but after discussion with the store manager on September 27 the claimant's start time was adjusted to 4:45 p.m., avoiding some tardies, but still not avoiding the tardy on October 16, when she reported to work at 5:20 p.m. because the lab had run long with a mandatory project. The employer had given her warnings on September 12, September 14, and September 27; the September 27 warning had advised her that she was at 6.25 points under the seven-point program. On October 16 the claimant attempted to contact the employer about two hours before her shift to forewarn the employer she would be late because the lab would be running late; whether or not the claimant contacted the employer, the tardy was still considered to be unexcused.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). Of the claimant's occurrences through October 16, only the three points due to absences for illness can be treated as excusable. While these might be treated as excusable for purposes of determining misconduct, the employer is still entitled to consider these absences when it chooses to impose discipline. *Cosper*, supra; *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007). The remainder of the occurrences establish that the claimant did have excessive unexcused occurrences. Tardies are treated as absences for purposes of

unemployment insurance law. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Absences due to issues that are of purely personal responsibility are not excusable. *Higgins*, supra; *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984). The claimant knew or should have known that should she have another occurrence due to the conflict between her school schedule and her work schedule that her job was in jeopardy. While personally understandable, the choice to honor the school schedule over the work schedule to prevent a further incident of tardiness was a matter of personal responsibility. The claimant's final occurrence was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future occurrences could result in termination. *Higgins*, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's November 5, 2012 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of October 20, 2012. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/bjc