

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KIMBERLY JONES
444 MCKINLEY
OTTUMWA IA 52501

GOOD SAMARITAN SOCIETY INC
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-10404-ET
OC: 08-22-04 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 15, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 19, 2004. The claimant participated in the hearing. Fred Metcalf, Human Resources Associate, and Jennifer Stokes, Supervisor, participated in the hearing on behalf of the employer. Employer's Exhibits One through Six were admitted into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time social worker for Good Samaritan Society, Inc. from November 7, 2002 to August 25, 2004. She was discharged for excessive unexcused absenteeism. She received three warnings for absenteeism in 2003, with the last one issued August 8, 2003. Subsequent to that time, the claimant received one written warning May 10, 2004, for two unexcused absences. On August 23, 2004, the claimant requested the morning off work August 25, 2004, and the request was approved. On that morning, the claimant called in to also request that afternoon off work. Her supervisor told her if she intended to take time off, she needed to submit a paid time off (PTO) request. The claimant immediately went to work and submitted the request. She did not work that afternoon and was discharged the following morning.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term “absenteeism” also encompasses conduct that is more accurately referred to as “tardiness.” An absence is an extended tardiness, and an incident of tardiness is a limited absence. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Although the claimant had a prior history of absenteeism, she only had two unexcused absences in 2004, prior to the time of discharge. The claimant called the employer the morning of August 25, 2004, to request the afternoon off work. The employer responded that if she intended to take time off work, she needed to submit a PTO request. The claimant complied with the employer’s directive and immediately went to work to submit a PTO request. The employer never advised the claimant the PTO request would be denied or that she would lose her job if she failed to report to work. The claimant was discharged without adequate notice and two and one half unexcused absences in nearly ten months does not constitute excessive unexcused absenteeism as defined by Iowa law. Consequently, benefits are allowed.

DECISION:

The September 15, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The employer’s account is not subject to charge in this current benefit year.

je/smc