

**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**

**AZURE D MARSHALL
3447 W 23RD ST APT 2
CHICAGO IL 60623-3235**

**SYSTEMS UNLIMITED INC
1556 – 1ST AVE S
IOWA CITY IA 52240**

**Appeal Number: 06A-UI-01973-DWT
OC: 01/29/06 R: 12
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Azure D. Marshall (claimant) appealed a representative's February 15, 2006 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Systems Unlimited, Inc. (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 7, 2006. The claimant participated in the hearing. Kari Wilken, a human resource specialist, appeared on the employer's behalf. 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:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 28, 2005. The claimant worked as a part-time counselor for the employer. The claimant provided services to the employer's clients by going into their homes. The claimant's supervisor was Nicole Harman.

The employer started noticing attendance problems with the claimant and gave her a warning on October 11, 2005. After the claimant did not report to a critical care client's home as scheduled, the employer gave her a written warning on November 17. On November 19, the claimant notified the employer she would be 10 minutes late for a scheduled appointment, but was 45 minutes late. On December 1, 2005, the claimant received her final written warning for reporting to work an hour late without notifying the employer she would be late for work. The final written warning informed the claimant that if she had any unapproved absences within the 90 days, she would be discharged.

The claimant did not have any attendance problems from December 1 though January 8, her last day of work. On January 13, 2006, the claimant was arrested on a domestic assault charge. The local police mistakenly arrested the claimant even though she had a protection order against a former boyfriend. The local law enforcement understood the former boyfriend had a protection order against the claimant. (Charges against the claimant were ultimately dismissed). The claimant attempted to contact the employer on January 13 when she was in jail to let the employer know what had happened, but the claimant's collect call was not accepted. When the claimant did not report to work on January 15 and 16, the employer discharged the claimant for continued attendance problems.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence

or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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).

The claimant understood her job was in jeopardy after she received her final written warning on December 1, 2005. The claimant did not have any problems with working as scheduled until January 15 and 16 when she was in jail. The facts indicate the claimant's arrest was unexpected and charges against her were dismissed because she had a protection order against a former boyfriend. The claimant even attempted to notify the employer on January 13, but because she was in jail, she could only make a collect call, which was not accepted. The facts establish the claimant did not intentionally or substantially disregard the employer's interests when she failed to report to work on January 15 and 16 for reasons which were beyond her control.

The employer followed its policy and discharged the claimant for business reasons. The claimant did not, however, commit work-connected misconduct. Therefore, as of January 29, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 15, 2006 decision (reference 02) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of January 29, 2006, based on this employment separation, the claimant is qualified to receive unemployment insurance benefits. The claimant must meet all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kkf