

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LATASHIA T DECATUR**  
Claimant

**APPEAL NO. 09A-UI-09897-E2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEEF PRODUCTS INC**  
Employer

**OC: 05/24/09**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated July 1, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 28, 2009. Claimant participated personally. Employer participated by Rick Woods and Jennifer Stubbs. Exhibit 1 was admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Employer discharged claimant on May 23, 2009 because she had accumulated 14 attendance points within one calendar year in violation of the employer's attendance policy. The claimant was hired as a general laborer on June 17, 2008. At the time of her hire she was provided a copy of the employer's attendance policy. The claimant was provided verbal and written notice about the number of points she was accumulating. The claimant received a written warning when she reached 13 points on October 6, 2008. The claimant accumulated 10 points for medical reasons. The claimant was two or more hours tardy on September 2, 2008 (2 points) and less than two hours tardy on September 7, 2008 (one point). The claimant received her 13 point on October 6, 2008. The claimant was three minutes late on May 23, 2009. The claimant was in the parking lot of her employer on time but broke off her car key causing her to be tardy.

**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(8) provides:

(8) Past acts of misconduct. 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.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. The Iowa Supreme Court has opined that one unexcused absence is not misconduct even when it followed nine other excused absences and was in violation of a direct order. Sallis v. EAB, 437 N.W.2d 895 (Iowa 1989). Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984), held that the absences must be both excessive and unexcused. The Iowa Supreme Court has held that excessive is more than one. While three is a reasonable interpretation of excessive based on current case law and Webster's Dictionary, the interpretation is best derived from the facts presented.

In this case the evidence does not support a finding of misconduct. The three minutes of being late was not a significant disregard of her employer's interest. The last point the claimant had accumulated before her discharge was 230 days in the past, and that was for a medical absence. The last unexcused absence was on September 10, 2008, 253 days from the claimant being three minutes late. Excessive tardiness can be grounds for discharge; not in this case however. The claimant had been warned about her attendance. The absences that were unexcused for unemployment purposes were three different days of being tardy spread out over seven months.

The administrative law judge holds that the evidence has failed establish that claimant was discharged for an act of misconduct when claimant violated the employer's policy concerning attendance.

**DECISION:**

The decision of the representative dated July 1, 2009, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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James Elliott  
Administrative Law Judge

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Decision Dated and Mailed

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