

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISHUN LERCH**  
Claimant

**APPEAL NO. 07A-UI-08201-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SLB OF IOWA LC**  
Employer

**OC: 07-22-07 R: 03  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 21, 2007, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 11, 2007. The claimant participated in the hearing. Lindsey Kerr, Human Resources Generalist, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time customer service associate for Panera Bread from October 16, 2006 to May 15, 2007. On February 10, 2007, the claimant was two minutes late and received a written warning. On March 24, 2007, she was one hour late when the schedule changed after she wrote it down. On May 5, 2007, the claimant was tardy but neither party remembers what time she arrived. On May 14, 2007, the claimant was returning from Memphis, Tennessee, when her rental car broke down. Her cell phone did not get service in that area and she used the change she had to contact the rental company and they brought her a new car. The claimant called the employer three hours after the start of her shift and explained what had happened and the employer issued a written warning to the claimant and stated the next infraction would result in termination. On May 15, 2007, the claimant was ill and vomiting and called the employer ten minutes after the start of her shift to say she was sick and would not be in. She left a message with another associate rather than a manager because she felt like she was going to get sick again. She told the associate she would call back later. Around 4:00 p.m. she contacted an assistant manager because she was concerned about her job status, but he was unaware of any warnings or a possible termination, so the claimant reported for work May 16, 2007, and was discharged at that time for excessive unexcused absenteeism.

## 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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (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 substantial and 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). The claimant was tardy four times and absent one day during her seven months of employment with Panera, which does not rise to the level of excessive as that term is understood in unemployment insurance law. The claimant was two minutes late February 24, 2007; one hour late because of a schedule change March 24, 2007; late for an unknown reason May 5, 2007; three hours late because of problems with a rental car and her cell phone May 14, 2007; and absent due to illness May 15, 2007. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant failed to call in two hours prior to her shift May 15, 2007, she was ill and vomiting and consequently called in 10 minutes late and did not talk to the

manager because she felt that she was going to vomit again. She did call back later and talked to a manager, and he was not aware of any disciplinary action or termination proceedings until she arrived at work the following day. Under these circumstances, and because the final absence was related to reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Benefits are allowed.

**DECISION:**

The August 21, 2007, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw