

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA A BARAJAS**

Claimant

**APPEAL NO: 13A-UI-12791-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APAC CUSTOMER SERVICES INC**

Employer

**OC: 10/20/13**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated November 8, 2013, reference 01, that held the claimant was not discharged for misconduct on October 7, 2013, and benefits are allowed. A telephone hearing was held on December 9, 2013. The claimant participated. Turkessa Newsome, HR Generalist, and Tomara Smith, Team Leader, participated for the employer.

**ISSUE:**

Whether claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on August 9, 2010, and last worked for the employer as a full-time CSR on October 7, 2013. The employer has a written attendance policy that was provided to claimant. It revised that policy April 26, 2013. An employee is subject to termination at twelve and one-half points. The number of points is based on whether the attendance issue is leaving early, absence, tardy, or no-call/no-show.

The employer had issued claimant attendance warnings in May and June 2013. Claimant had issues with the number of points due to a discrepancy with what the computer system record showed and what was given on the warning sheet.

The employer issued claimant a final warning on October for thirteen and one-half points. Claimant disagreed with two no-call/no-show events at two points each because she had reported those absences. The employer considers an untimely absence report as a no-call/no-show to work.

Claimant was absent due to car trouble on October 4 and it terminated her for being over the point limit on October 7. The employer did not participate in department fact finding.

**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(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 administrative law judge concludes employer failed to establish claimant was discharged for misconduct on October 7, 2013 for excessive unexcused absenteeism.

The employer failed to offer evidence of its attendance policy and warnings issued to claimant. Claimant disputed the number of points she had accumulated as being over the threshold. Even though a late call reporting an absence might be a policy violation, it is not a no-call/no-show to work. The fact there were issues with what the employer computer record system showed for claimant points against a written adjusted record further clouds the attendance point issue. Job disqualifying misconduct is not established.

**DECISION:**

The department decision dated November 8, 2013, reference 01, is affirmed. The claimant was not discharged for misconduct on October 7, 2013. Benefits are allowed, provided claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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