

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MOLLY J MORRIS**

Claimant

**APPEAL NO. 10A-UI-13938-D**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QWEST CORPORATION**

Employer

**OC: 09/05/10**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Molly J. Morris (claimant) appealed a representative's September 28, 2010 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Qwest Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on November 10, 2010. The claimant participated in the hearing. John O'Fallon of Barnett Associates appeared by telephone on the employer's behalf and presented testimony from two in-person witnesses, Jen Kingston and Anne Rodriguez. During the hearing, Employer's Exhibits One and Two were entered into evidence. 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:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on November 30, 2009. She worked full-time as a center sales and service associate. Her last day of work was September 3, 2010. The employer discharged her on that date. The reason asserted for the discharge was repeated tardiness for scheduled overtime after prior warnings.

As the claimant was notified at the time of her hire, the employer does sometimes schedule associates for mandatory overtime. The overtime is usually scheduled about two weeks in advance, and is usually just to come in about an hour early on one or two specified days of the week. As the claimant's shift generally began at 9:00 a.m., her scheduled overtime would typically be from 8:00 a.m. to 9:00 a.m.

Between March 29 and August 2 the claimant either missed the full hour or was late for a portion of the hour of overtime on ten occasions, for which she was verbally reprimanded. Because of an overall staff problem with fulfilling the mandatory overtime requirement, on July 12, 2010 the claimant, as well as other employees, received a specific written reminder of

the obligation to work the scheduled overtime, and of the potential for disciplinary action for failure to work the mandatory overtime as scheduled.

After signing acknowledgement of this expectation reminder, the claimant again missed a half hour of scheduled overtime on July 13, the full hour on July 19, and again the full hour on August 2. As a result, on August 3 she was given a final warning that future occurrences could result in discharge.

The claimant had a baby in approximately early May; as of August 30, the baby was about four months old. The baby's father lived in the home with the claimant. However, he was undergoing some issues affecting his mental stability, and became acutely depressed to the point of voicing suicidal thoughts about once a week. The vast majority of the times the claimant was late or missed her scheduled overtime were because of these incidents, during which times she did not feel she could or should safely leave her baby for fear that the father would do something to himself that would render the child unattended. She realized that she should arrange for some backup system to be able to attend to the father or her baby in the event of these episodes, but had not secured such backup.

On August 30 the claimant was again scheduled for an hour of mandatory overtime to start at 8:00 a.m. Prior to the claimant leaving for the scheduled work that morning, the baby's father again had an episode of instability. This episode, as the others had been, was not so serious as to prompt the claimant to seek emergency or medical attention for the father, but the claimant simply stayed home and spoke with him until she felt he was sufficiently stable; she did not attempt to have any backup family member or other support come in to stay with the father and the baby so that she could leave for work. By the time the claimant felt she could leave home and head for work, the delay caused her to be eleven minutes late. Because of this additional incident after the final warning, the employer discharged the claimant.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Excessive unexcused absences can constitute misconduct. 871 IAC 24.32(7); Cosper, supra; Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). Tardies are treated as absences for purposes of unemployment insurance law. Higgins, supra. Attendance occurrences due to issues that are of purely personal responsibility are not excusable. Higgins, supra; Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The claimant had adequate notice of the scheduled overtime, and knew that she had an ongoing personal problem that she needed be prepared to deal with on short notice because it was interfering with her job duties and was placing her job in jeopardy. Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa App. 1985); Boyd v. Iowa Department of Job Service, 377 N.W.2d 1 (Iowa App. 1985). The claimant's final occurrence was not excused and was not due to an unforeseeable or truly acute or severe emergency. The claimant had previously been warned that future occurrences could result in termination. Higgins, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's September 28, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of September 3, 2010. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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