

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

NELLIE M BOUCHER  
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KNOXVILLE IA 50138

CARE INITIATIVES  
c/o JOHNSON & ASSOC/TALX  
PO BOX 6007  
OMAHA NE 68106-6007

Appeal Number: 06A-UI-03279-DWT  
OC: 02/26/06 R: 02  
Claimant: Appellant (1)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Nellie M. Boucher (claimant) appealed a representative's March 17, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Care Initiatives (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 12, 2006. The claimant participated in the hearing. Lynn Corbeil, attorney at law, appeared on the employer's behalf. Larry Leforte, the maintenance environmental supervisor, and Marla Budding, Leforte's assistant, testified 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 employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 1996. The claimant worked as a full-time laundry aide. Leforte and Budding supervised the claimant. The claimant worked the 6:00 a.m. to 2:30 p.m. shift.

The claimant received a copy of the employer's attendance policy. This policy informed employees they could be discharged if they accumulated 10 unscheduled attendance occurrences in a 12-month time frame. The employer considers two instances of tardies to equal one attendance occurrence. If an employee picks up a shift, one unscheduled absence can be removed. The employer allows employees a seven-minute grace period before counting the employee late for work.

The employer gave the claimant a final written warning for her attendance on July 28, 2005. The employer warned the claimant her job was in jeopardy but indicated she could work some make-up shifts and remove some occurrences. On December 16, 2005, the employer gave the claimant another final written warning for attendance problems. While the claimant had been absent some days because either she or a child was ill, most of her attendance occurrences occurred because she was late for work. Since the claimant's job was in jeopardy because of her attendance, the employer gave the claimant another copy of the employer's attendance policy and encouraged her to pick up shifts to reduce the number of her attendance occurrences.

In January 2006, the claimant did not report to work until 6:08 a.m. or later on January 3, 20, 23, 24, 25, and 26. In February, the claimant was late for work by more than seven minutes on February 2, 11, 14, 16, 17, and 22. When the claimant was ill, she properly notified the employer she was ill and unable to work. The claimant reported she was ill on January 6; and February 2, 9 and 23.

The claimant was sometimes late for work because she gave a co-worker a ride to work. Even though the co-worker made the claimant late for work, the claimant continued giving her rides. Before the claimant went to work, she took her son to her mother's home that was across town.

On February 16, the claimant was 15 minutes late for work. On February 17, the claimant was 10 minutes late for work. The claimant was late for work these days because it was slick outside, her car did not start one day, and she had to scrape ice off the windows before she left her home. Although the claimant reported to work on time on February 20, the claimant was ten minutes late for work on February 22. After the claimant left work early on February 22, Leforte learned about the number of attendance occurrences she had accumulated since January 1, 2006.

On February 22, 2006, the employer decided to discharge the claimant for violating the employer's attendance policy in January and February 2006 after the employer warned her that her job was in jeopardy on December 16, 2005. On February 27, 2006, the employer informed the claimant she was discharged.

#### 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. 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).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew and understood her job was in jeopardy in mid-December 2005. Even though her job was in jeopardy, the claimant continued to report to work late. The number of times the claimant reported to work by 6:08 a.m. or later in January and February 2006, amounts to an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for work-connected misconduct. As of February 26, 2006, the claimant is not qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's March 17, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 26, 2006. 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.

dlw/kkf