

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARRIE WHITELEY**  
Claimant

**APPEAL NO. 08A-UI-05737-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MOSAIC**  
Employer

**OC: 05/25/08 R: 02  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 18, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on July 8, 2008. The claimant participated personally. The employer represented by Lynn Corbeil, Attorney at Law, and participated through Carol Mau, Executive Director and Kelly Thompson, Program Coordinator.

**ISSUE:**

The issue is whether the 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 that: The claimant was hired on April 10, 2007, as a full-time direct support associate. The claimant signed for receipt of the employer's handbook on April 12, 2007. The employer issued the claimant a verbal warning on November 16, 2007, for eleven tardies and seven absences. Four of the absences were due to illness. On December 31, 2007, the employer issued the claimant a written warning for failure to properly report her absence. The employer warned the claimant that further infractions could result in termination from employment. The employer issued the claimant a written warning on May 13, 2008, when the claimant left early four times and was absent five times for illness. The employer warned the claimant that further infractions could result in termination from employment. On May 18, 2008, the claimant did not appear for work or notify the employer of her absence. On May 19, 2008, the claimant notified the employer that she had been in the hospital and could not work either day. The claimant thought her friend notified the employer of her absence.

The claimant took vacation from May 21 through 25, 2008, to attend a friend's wedding in Portland, Oregon. The claimant did not check in with the airline until right before the flight. Other passengers had gotten their seats on line the day before. The claimant was the last person to check in and the flight was overbooked. There was no seat for her. She telephoned the employer and said she would not be at work on May 26, 2008. The employer terminated the claimant on May 27, 2008.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. Absenteeism arising out of matters of purely personal responsibilities such as childcare and transportation are not excusable. Higgins v. Iowa Department of Job Service, 275 N.W.2d 187 (Iowa 1984).

The claimant's final absence was due to her lack of transportation, a personal issue. The claimant's absence was due to lack of transportation, a purely personal responsibility. Therefore, the claimant's absence is not excusable. The employer has met its burden of proof to show misconduct. The claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The June 18, 2008, reference 01, representative's decision is reversed. The claimant is not eligible to receive unemployment insurance benefits, because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/css