

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BECKY S EMMERT
Claimant

APPEAL NO. 11A-UI-07560-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUSTOM-PAK INC
Employer

**OC: 11/21/11
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Becky Emmert, filed an appeal from a decision dated June 3, 2011, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on July 6, 2011. The claimant participated on her own behalf. The employer, Custom-Pak, participated by Human Resources Coordinator Vicki Rixen.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Becky Emmert was employed by Custom-Pak from April 28, 2008 until May 11, 2011 as a full-time production worker. During the course of her employment the claimant received numerous disciplinary actions for absenteeism. The usual reason for her absences, tardies and early outs was personal problems such as lack of transportation.

The final written warning was received on April 13, 2011, when she had seven points. The warning advised her any further attendance problems could lead to discharge. Under the policy discharge will occur at eight points.

Ms. Emmert was 50 minutes late to work on the shift which began at 10:42 p.m. on May 10, 2011. She had overslept because her alarm did not go off. She was then at eight points and was discharged by Third Shift Production Facilitator Dan Zetryt.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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 claimant had been advised her job was in jeopardy as a result of her absenteeism on more than one occasion. The final incident was being late to work due to oversleeping. Matters of purely personal consideration, such as oversleeping, are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). The claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of June 3, 2011, reference 02, is affirmed. Becky Emmert is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs