

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**SONYIA S KRETLOW**  
Claimant

**JP SENIOR HEALTHCARE LLC**  
Employer

**APPEAL NO. 14A-UI-08744-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/03/14**  
**Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated August 19, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 10, 2014. Claimant participated personally. Employer participated by Angela Johnson.

**ISSUE:**

The issue in this matter is whether 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: Claimant last worked for employer on August 4, 2014. Employer discharged claimant on August 4, 2014 because of excessive absenteeism and tardiness.

Employer has an attendance policy giving points for various absences and tardiness. Under progressive discipline warnings are given out at 6 and 12 points, and dismissal occurs upon receiving 18 points in a 6-month period. Claimant received notice of having 13 points on July 14, 2014. (These points had been accumulated through June 25, 2014.) Subsequent to receiving the notice, claimant accumulated 4 additional points.

Claimant was terminated on August 4, 2014 for having accumulated 18 points. Although employer notified claimant on July 14, 2014 that she had accumulated 13 points, she had really accumulated 14 points. Employer never notified claimant of its error in calculation.

**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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning absenteeism and tardiness. Claimant was warned concerning this policy, but employer's

warning to claimant alerted her of an incorrect number of points accumulated. Claimant's reliance on the points stated by employer led her to reasonably believe she had not accumulated sufficient points to be terminated.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant reasonably believed she had not accumulated enough points to be terminated under company policy based on the July 14, 2014 warning notice. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated August 19, 2014, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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