

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

AMANDA M ROBBINS
724 – 2ND ST NE
BELMOND IA 50421

WINNEBAGO INDUSTRIES
PO BOX 152
FOREST CITY IA 50436-0152

Appeal Number: 05A-UI-01380-RT
OC: 08-08-04 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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Amanda M. Robbins, filed a timely appeal from an unemployment insurance decision dated February 1, 2005, reference 06, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on February 23, 2005, with the claimant participating. Gary McCarthy, Personnel Supervisor, participated in the hearing for the employer, Winnebago Industries. Employer's Exhibits One and Two were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record including Employer's Exhibits One and Two, the administrative law judge finds: The claimant was employed by the employer as a full-time production assembler from September 13, 2004 until she was discharged on January 6, 2005 for failing to comply with the employer's policy regarding notification of absences and tardies and basically poor attendance. The employer has a policy in its handbook, a copy of which the claimant received and for which she signed an acknowledgement and of which she was aware, requiring that an employee who is going to be late or absent make official notification by calling a certain telephone number within one hour before or after the start of the employee's shift as shown at Employer's Exhibit One. This telephone number is also on an identification card from the employer. On January 5, 2005, the claimant was absent from work. She drove her car into the ditch and did not get it out of the ditch and get home until noon. The claimant did not have a cell phone to call the employer when she put her car in the ditch. After the claimant got home, she did not call the employer. Exactly why the claimant did not call the employer was uncertain. The claimant first said she didn't have a telephone to call the employer and then said she did not have an identification card so as to determine the telephone number to call the employer. However, the claimant was absent on December 15 and 16, 2004, and properly reported these absences to the employer. They were for personal illness or doctor's appointments.

On November 12, 2004, the claimant was tardy five hours. She came to work early and then fell asleep in her car and did not wake up for a while and when she woke up she went immediately to work. The claimant did not call in this tardy. The claimant was suspended two days for this failure. On November 9, 2004, the claimant was absent for a doctor's appointment and did not call in this absence. The doctor's appointment was out of the area. The claimant testified that she informed her lead man the day before this absence and was told it was unacceptable. In any event, the claimant did not call in this absence. The claimant received a written warning for this failure. The claimant was absent on October 28, 2004 for personal illness and again did not notify the employer. The reason for the claimant's failure is uncertain. The claimant received a verbal warning for this failure. The warnings appear at Employer's Exhibit Two. Pursuant to her claim for unemployment insurance benefits filed effective August 8, 2004 and reopened effective December 26, 2004 and January 9, 2005, the claimant has received no unemployment insurance benefits since separating from the employer herein on or about January 6, 2005 and reopening her claim January 9, 2005. The claimant did receive unemployment insurance benefits in the amount of \$307.00 for benefit week ending January 1, 2005 but this occurred before her separation and is not relevant here.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 parties agree, and the administrative law judge concludes, that the claimant was discharged on January 6, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. Excessive unexcused absenteeism is disqualifying misconduct and includes tardies and necessarily requires the consideration of past acts and warnings. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The administrative law judge concludes that the real reason for the claimant's discharge was excessive unexcused absenteeism because as defined above it includes absences or tardies that are not properly reported. The employer's witness, Gary McCarthy, Personnel Supervisor, credibly testified that the claimant was discharged for a failure to comply with the employer's policy about notification of absences. The administrative law judge concludes that this is really excessive unexcused absenteeism. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct, namely, excessive unexcused absenteeism. As set out in the findings of fact, the claimant had three absences and a substantial tardy of five hours none of which were properly reported to the employer. The employer has a policy as shown at Employer's Exhibit One, a copy of which the claimant received and for which she signed an acknowledgement and of which she was aware,

requiring that employees notify the employer of an absence or tardy within one hour before or after the start of the employee's shift and provides a telephone number for the employees to call. This telephone number is also on an identification card issued by the employer. The claimant was aware of this policy and aware that she needed to call in any absence or tardy. The claimant basically concedes that she failed to do so on each occasion. The claimant testified that she did not do so on January 5, 2005 because she had put her car in the ditch and had no cell phone. The administrative law judge would understand a delay in notifying the employer but the claimant testified that she got out of the ditch and got home at noon and still did not call the employer. The claimant first testified that she did not call the employer because she does not have a telephone number and later testified that she did not have an identification card and therefore could not obtain the telephone number. Claimant testified that the identification card was taken by a state patrol officer. Claimant testified that her driver's license was also taken but returned to her. The administrative law judge does not find this credible. He does not know why a patrol officer would return the claimant's driver's license but fail to return the claimant's work identification. In any event, the claimant testified that this happened in November and she had not bothered to obtain a replacement card. Finally, the claimant was at home and the telephone number was in the claimant's handbook and at one point she testified the handbook was in her home. The administrative law judge concludes that the claimant has not shown good cause for failing to notify the employer of this absence. The claimant testified that she fell asleep on November 12, 2004 in her car while at work when she came to work early and could not call in because she was asleep and when she woke she went immediately to work. The administrative law judge does not believe that this is an excuse either for the tardy or for failure to notify the employer. The claimant testified that on November 9, 2004 she had a doctor's appointment and notified the lead man in advance who said it was unacceptable. The claimant's real supervisor was gone. The claimant went to the doctor's appointment the next day and did not call the employer as per the policy. The administrative law judge can not understand why the claimant would not call the employer at the number provided especially when the lead man had told her that her absence would not be acceptable. The claimant obviously determined to go to the doctor's appointment and therefore should have called in the absence and she has not demonstrated good cause for not doing so. Finally, on October 28, 2004 the claimant testified that she did not notify the employer of her absence because she had lost her identification card and did not have a number. Again, this is not credible because the employer's number is in the handbook. Further, this was before the claimant alleged that the state patrol officer had taken her identification card. Apparently, the claimant had lost her card and was unable to notify the employer on October 28, 2004 but got a replacement card which was then taken by the state patrol. For the first three failures to notify the employer, the claimant got a verbal warning, a written warning and a suspension as shown at Employer's Exhibit Two. The bottom line here is that the claimant failed to notify the employer on four different occasions even after receiving warnings and a suspension and the reasons given by the employee do not establish good cause for her failures to do so. The claimant's testimony to the contrary is not credible. She equivocates about why she did not call in, whether she had a phone or whether she was unable to get the employer's number because she did not have an identification card and how many identification cards that she had or lost or were taken. What convinces the administrative law judge that the claimant's excuses are not good cause is that the claimant was absent on December 15 and 16, 2004 and properly notified the employer of those absences. Accordingly, the administrative law judge is constrained to conclude that the claimant's absences and tardies were not properly reported and at least one, her tardy, was not for reasonable cause and therefore these occasions were excessive unexcused absenteeism and disqualifying misconduct. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision dated February 1, 2005, reference 06, is affirmed. The claimant, Amanda M. Robbins, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits. Since the claimant has received no unemployment benefits since her separation from the employer, she is not overpaid any such benefit.

sc/sc