

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYLA S BONNER
Claimant

APPEAL NO. 13A-UI-02452-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 01/20/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated February 20, 2013, reference 02, which denied unemployment insurance benefits finding that the claimant was discharged for excessive unexcused absenteeism and tardiness after being warned. After due notice, a telephone hearing was held on July 1, 2013. Claimant participated. The employer participated by Ms. Leslie Buhler, Hearing Representative, and witness, Ms. Sara Thomas, Director of Nursing.

ISSUE:

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

FINDINGS OF FACT:

Kayla Bonner was employed by Care Initiatives from July 26, 2011 until January 25, 2013 when she was discharged for excessive absenteeism and tardiness. Ms. Bonner was employed as a part-time certified nursing assistant. The claimant was usually scheduled for approximately 21 hours of work per week and was paid by the hour. Her immediate supervisor was the director of nursing, Sara Thomas.

Ms. Bonner was discharged from Care Initiatives after she had exceeded the permissible number of attendance infractions allowed under company policy. Ms. Bonner had received seven warnings regarding her attendance and punctuality prior to being discharged. The final warning was issued to the claimant on January 4, 2013. At that time the claimant was placed on notice that her attendance and punctuality were unsatisfactory and additional violations could result in her termination from employment.

The final incident that caused the claimant's discharge took place on January 25, 2013 when Ms. Bonner reported to work approximately 20 minutes late after "oversleeping."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant was discharged under disqualifying conditions.

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.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

No contract for employment is more basic than the right of the employer to expect employees will appear for work on the hour and day agreed upon. Recurrent failure to honor that obligation shows a substantial disregard for the employer's interests and thus may justify a finding of misconduct in connection with the employment.

The Iowa Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is a form of job misconduct. The Court held that the absences must both be excessive and unexcused and that the concept includes tardiness, leaving early, etc. The Court held that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer. In the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) the Court held that absence due to matters of "personal responsibility" such as transportation or oversleeping are considered unexcused.

The evidence in the record establishes that Ms. Bonner's absences and tardiness and leaving early were excessive and that the claimant had been properly warned. The claimant has supplied no documentation that her final infraction of reporting to work late due to oversleeping was for an excusable medical reason. The administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's job separation took place under disqualifying conditions.

DECISION:

The representative's decision dated February 20, 2013, reference 02, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs