

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRYSTAL M JASSO
Claimant

APPEAL NO. 13A-UI-04227-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS ENTERPRISES INC
Employer

OC: 03/17/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 2, 2013, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on May 15, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. John Henson participated in the hearing on behalf of the employer with a witness, Mark McCarty. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer from March 7, 2011, to March 18, 2013. She was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to discharge if they reach nine attendance occurrences twice in a 12-month period.

The claimant had been issued a final written warning on February 12, 2013, for having 9.5 attendance occurrences. The following are the dates, occurrence points, and reasons for the occurrences leading to this final written warning:

Date	Number of Occurrences	Reason for Occurrence
February 26, 2012	½ point	Missed punch
March 14, 2012	½ point	Missed punch
April 25, 2012	½ point	Missed Punch
April 29, 2012	1 point	Called in Absent
June 10, 2012	1 point	Called in Absent
July 29, 2012	1 point	Called in Absent
September 9, 2012	1 point	Called in Absent
September 16, 2012	1 point	Called in Absent
September 23, 2012	1 point	Called in Absent
October 7, 2012	½ point	Missed Punch
November 18, 2012	½ point	Missed Punch
November 19, 2012	½ point	Missed Punch
February 1, 2013	½ point	Missed Punch
Total	9½ points	

After February 12, 2013, the claimant knew her job was in jeopardy due to her attendance issues. Some of the days missed were due to family medical issues. She also did not believe she missed punching in on November 18 and 19.

The claimant was scheduled to work at 4:00 p.m. on March 18. She failed to check the schedule and reported to work 45 minutes late. She received another half point for tardiness, which put her at nine occurrences again. As a result, the claimant was discharged on March 19, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: “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.” 871 IAC 24.32(7).

The decision in the case is not whether the claimant should or should not have received points on particular days; it is whether when she was late for work on March 18, 2013, she committed work-connected misconduct. The claimant disputed two days of missed punches, but had a history of attendance issues for which she had been repeatedly warned. She knew her job was in jeopardy but was substantially late for work on March 18. Other than the days in September,

the claimant offered no excuses for her days missed. Work-connected misconduct has been established in this case.

DECISION:

The unemployment insurance decision dated April 2, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css