

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L MILLER
Claimant

APPEAL NO: 14A-UI-05734-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASON CITY CLINIC PC
Employer

OC: 05/11/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jennifer L. Miller (claimant) appealed a representative's May 30, 2014 (reference 01) decision that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Mason City Clinic, P.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 26, 2014. The claimant participated in the hearing. Dana Young appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on November 16, 2007. She worked part time (35 – 38 hours per week) as a receptionist. Her last day of work was May 8, 2014. The employer discharged her on that date. The reason asserted for the discharge was excessive tardiness.

The employer asserted that the claimant had at least 17 instances of tardiness in 2014, but did not have specific dates and times other than the alleged final instance. The claimant had been verbally warned about tardiness on March 12, 2014 and had been given a written warning for tardiness on April 10, 2014.

The employer asserted that the final occurrence was on May 7, 2014. The claimant's scheduled start time that day was 8:15 a.m. The employer asserted that she had been at least about seven minutes late that day. The employer relies solely on the second-hand report of the claimant's supervisor, who told the employer's administrator that the claimant was not at her desk when the claimant's phone read out read 8:15 a.m.

The claimant had in fact arrived at her desk at 8:15 a.m. according to the actual time as indicated on the computer system; the time as shown on the phone read out was three minutes ahead of the computer time. When the claimant arrived she immediately picked up a telephone call and so she did not finish logging into the computer system until after she finished with the call.

Because of the employer's conclusion that the claimant had been tardy again on May 7, it proceeded to discharge her.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive unexcused absenteeism can constitute misconduct. Rule 871 IAC 24.32(7). Tardies are treated as absences for purposes of unemployment insurance law. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). The employer relies exclusively on the second-hand account from the claimant's supervisor; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the supervisor might have been mistaken, whether she actually observed the entire time in

question, whether she is credible, or whether the employer's witness might have misinterpreted or misunderstood aspects of her report. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was in fact again tardy on May 7. The employer has failed to meet its burden to establish misconduct. *Cosper, supra*. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's May 30, 2014 (reference 01) decision is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/can