

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA L SMITH
Claimant

APPEAL NO. 13A-UI-03776-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

THEISENS INC
Employer

OC: 02/17/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the representative's decision dated March 13, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on May 2, 2013. The claimant participated personally. The employer participated by Cindy Burdt, director of human resources. The record consists of the testimony of Cindy Burdt and the testimony of Angela Smith.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The claimant worked as a part-time cashier at the employer's store located in Dyersville, Iowa. The claimant was hired on October 19, 2011. The claimant's last day of work was December 15, 2012. The claimant was terminated on December 17, 2012. The claimant was terminated for repeated tardiness.

The incident that led to the claimant's termination occurred on December 17, 2012. The claimant was scheduled to work at 4:00 p.m. and she arrived at 4:25 p.m. The claimant had been suspended for two days after she was late on December 9, 2012. The claimant was either late or left early on December 5, 2012; November 30, 2012; November 24, 2012; November 23, 2012; November 21, 2012; October 28, 2012; October 12, 2012; and October 3, 2012. The claimant received a total of four disciplinary actions, including the one suspension, for her chronic tardiness. The claimant knew her job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The employer showed that the claimant had excessive tardiness and leaving work early for unexcused reasons. The claimant said that she had responsibilities as a caregiver for her husband. This is a matter of personal responsibility and absent an emergency situation, the claimant's tardiness and early leaving cannot be considered excused. It was the claimant's responsibility to arrange for care of her husband just as it is a claimant's responsibility to arrange for child care. The claimant's absences are both excessive and unexcused. This is misconduct. Benefits are denied.

DECISION:

The unemployment insurance decision dated March 13, 2013, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs