

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Catherine Duehr was employed by Intier from October 21, 1996 until September 14, 2005. She was a full-time production worker.

Ms. Duehr had received a counseling and verbal warning on December 15, 2004, for absenteeism. The employer's attendance policy determines excessive absenteeism to be 31.2 hours in a rolling six-month period. When an employee reaches that point a counseling is given, then discipline is issued for every occurrence, beginning with a verbal warning, then a written warning, then discharge. Ms. Duehr received the written warning on June 8, 2005.

On August 29, 2005, the claimant was six minutes late for work. It is the responsibility of the supervisor to notify the human resources coordinator, who then confers with the human resources manager. In the present case the coordinator did not notify Human Resources Manager Marla Smith until September 6, 2005, and no information was available as to whether it was the supervisor or the coordinator who delayed passing the information along. Ms. Smith consulted with the plant manager who told her to check Ms. Duehr's attendance record to make sure all the absences were correctly counted, and she did so. The decision to discharge was made on or about September 8, 2005, but the claimant was on a pre-approved vacation until September 13, 2005. She was notified of her discharge at the end of that shift.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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 claimant knew her job was in jeopardy as a result of her absenteeism and tardiness. However, the employer delayed over two weeks from the date of the last incident to the date of discharge. 871 IAC 24.32(8) requires there to be a current, final act of misconduct before a disqualification may be imposed. The employer has failed to give any satisfactory account of the reason for the substantial delay between the last tardiness and the date of the discharge. The administrative law judge cannot conclude Intier acted promptly to discharge the claimant after her final incident of tardiness and it was therefore not a current act which precipitated the discharge. Disqualification may not be imposed.

DECISION:

The representative's decision of September 30, 2005, reference 01, is reversed. Catherine Duehr is qualified for benefits provided she is otherwise eligible.

bgh/s