

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRANDI J STENERSON**  
Claimant

**APPEAL NO. 12A-UI-01182-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DM SERVICES INC**  
Employer

**OC: 12/25/11**  
**Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Brandi Stenerson, filed an appeal from a decision dated January 24, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 28, 2012. The claimant participated on her own behalf. The employer, DM Services, participated by Human Resources Administrator Monica Rodriguez.

**ISSUE:**

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

**FINDINGS OF FACT:**

Brandi Stenerson was employed by DM Services from September 20, 2010 until December 23, 2011 as a full-time credit analyst.

On September 30, 2011, she was placed on a 90-day probation for being tardy and leaving work early six times between July 11 and September 25, 2011. The probation indicated she would be disciplined up to and including discharge, if she was tardy more than five times before December 29, 2011.

She continued to be tardy with incidents on October 3, 12, 19, November 1, 4, 25, and December 2, 12 and 14, 2011. She would call in to report she would be late due to a serious back condition, but because she was on probation the incidents were still counted against her. Operations Manager Dawn White discussed these issues with her with a memo outlining the discussion, on December 5, 2011.

The claimant had asked for FML paperwork which she received and submitted to her doctor. The doctor did not fill out the papers or submit them to the employer. Ms. Stenerson did not request an extension and the FML was never granted. She did not have her doctor submit a report to the employer outlining what accommodations would need to be made for her back problems.

The final incident was December 14, 2011, when she was one minute late to work. On December 23, 2011, when the time keeping records caught up with the administration, she was discharged.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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 claimant had been advised her job was in jeopardy as a result of her absenteeism. She did not successfully complete the probation period because she continued to be tardy more than five times during that period. But the tardies were due to a medical problem for which she was seeking medical help.

It would likely have been better had Ms. Stenerson made sure her doctor submitted the FML papers or at least a document outlining what the employer needed to do to accommodate her

restrictions. But there is no dispute her tardies during the probation period were due to illness and were properly reported.

In order to be disqualified from receiving unemployment benefits, a discharge must be precipitated by a current act of misconduct. 871 IAC 24.32(6). A properly reported illness cannot be considered misconduct as it is not volitional. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The employer could have discharged her as early as November 25, 2011, when she had her sixth incident of tardiness but instead it lagged behind for three more occurrences. Even the final incident of December 14, 2011 was more than a week before the actual discharge.

The record does not support a finding of willful and deliberate misconduct, or improperly reported absence due to illness. Disqualification may not be imposed.

**DECISION:**

The representative's decision of January 24, 2012, reference 01, is reversed. Brandi Stenerson is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs