

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RACHAEL M AGUIRRE**

Claimant

**APPEAL NO. 06A-UI-10985-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINNEBAGO INDUSTRIES**

Employer

**OC: 07/02/06 R: 02  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Rachael Aguirre (claimant) appealed a representative's November 8, 2006 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Winnebago Industries (employer) for repeated tardiness in reporting to work after being warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 30, 2006. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on July 16, 2002, as a full-time fab application worker. The claimant received approximately ten warnings for attendance. When she reached the level of termination, the employer gave the claimant another chance and issued a reprimand. The employer warned the claimant that further infractions could result in her termination from employment. On October 15, 2006, the claimant was 40 minutes late for work because her alarm clock did not go off. The employer terminated the claimant for repeated absenteeism after warnings.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. Higgins v. Iowa Department of Job Service, 275 N.W.2d 187 (Iowa 1984). Three incidents of tardiness or absenteeism after a warning constitutes misconduct. Clark v. Iowa Department of Job Service, 317 N.W.2d 517 (Iowa App. 1982). An employer has a right to expect employees to appear for work when scheduled. The claimant disregarded the employer's right by repeatedly being absent from work after warnings. The claimant's disregard of the employer's interests is misconduct. As such she is not eligible to receive unemployment insurance benefits.

#### **DECISION:**

The representative's November 8, 2006 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw