

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TANISHA K MCNEAL**  
Claimant

**APPEAL NO. 17A-UI-04884-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MICAH HOUSE CORP**  
Employer

**OC: 04/09/17**  
**Claimant: Appellant (1)**

Iowa Code § 96.5 (2)a - Discharge

**STATEMENT OF THE CASE:**

The claimant, filed a timely appeal from a representative's decision dated May 5, 2017, reference 01, was denied unemployment insurance benefits finding that the claimant was discharged from work on March 2, 2017 under disqualifying conditions. After due notice was provided, a telephone hearing was held on May 25, 2017. Claimant participated. The employer participated by Mr. Jaymes Sime, Executive Director.

**ISSUE:**

Whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds that: Ms. McNeal was employed by Micah House Corp. from November 10, 2016 until March 21, 2017 when she was discharged based upon her conduct on March 19 and March 20, 2017. Ms. McNeal worked as a full-time shelter specialist working from 12:00 a.m. until 8:00 a.m. and was paid by the hour. Her immediate supervisor was Chrystal Wenninghoff.

Ms. McNeal was scheduled to work as the only shelter specialist on the 12:00 a.m. – 8:00 a.m. shifts on March 19 and March 20, 2017. During the claimant's March 19th, 2017 shift, Ms. McNeal could not be located during substantial portions of the overnight shift and had not prepared breakfast as required for shelter residents prior to the end of her work shift that morning. During the overnight hours when clients were attempting to locate the claimant, she did not respond to repeated attempts to summon her by a client returning to the shelter after taking her child to the emergency room.

Ms. McNeal was scheduled to work from 12:00 a.m. until 8:00 a.m. on March 20, 2017 but did not report for work and did not notify the employer of her impending absence until four hours after her work shift had begun. Company policy requires employees to notify the company of impending absences two hours before an employee's shift is to begin. When questioned from

her supervisor about the circumstances of those incidences, Ms. McNeal explained that she had been ill and taking prescription medications such as antibiotics and painkillers and she also was taking "Nyquil" to ease flu like symptoms as she worked.

Ms. McNeal indicated to her employer that the problems associated with her work and her failure to report for work on the next shift were related to her use of the cough syrups and that she had now discontinued the use.

Based upon the number of complaints that the Micah House received about Ms. McNeal's conduct on the night of March 19, 2017, the employer reviewed security tapes and verified that the allegations that the claimant could not be located on the premises and that she had not responded to resident's needs. Micah House policy requires employees to notify the employer in advance if they are taking medications that might affect their ability to perform their duties, however the claimant had not done so.

Although Ms. McNeal was otherwise considered to be a good and valuable employee, the employer concluded that the claimant's conduct was a serious breach of Micah House policy and jeopardized the wellbeing of individuals housed in the shelter, as Ms. McNeal is the sole shelter specialist during the overnight shift. The employer also considered the claimant's attendance record that Ms. McNeal had been tardy in reporting to work on a number of occasions.

It is Ms. McNeal's position that she was unavailable to perform some of her duties on the night of March 19, 2017 because she was not feeling well and the medications that she had taken had affected her ability to do her job. It is the claimant's belief that she properly called off work for the next shift and claimant denies being tardy on more than two occasions prior to her discharge.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct on the part of the claimant sufficient on the denial of unemployment insurance benefits, it does.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In the case at hand, claimant was discharged from the position as an overnight homeless shelter specialist when she had jeopardized the wellbeing of homeless shelter residents on the night of March 19, 2017 when she had taken a combination of prescription pain killer and over the counter medications, and had reported for work without notifying the employer that she had taken medications that might affect her ability to work

The administrative law judge concludes that the employer has by preponderance of the evidence established misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. Accordingly, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

**DECISION:**

The representatives decision dated May 5, 2017, Ref 01, is affirmed. Claimant was discharged for misconduct in connection with her work. Unemployment insurance benefits are withheld until the claimant has worked had been paid wages for insured work equal to ten times her weekly benefit amount and meets all the eligible requirements of Iowa law.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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