

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NENA A DEBARD**  
Claimant

**APPEAL NO. 13A-UI-12080-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINEGARD COMPANY**  
Employer

**OC: 10/06/13  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated October 24, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on November 20, 2013. The claimant participated personally. The employer participated by Kerry Hale, Human Resources Manager, and Lester Gambrel, Supervisor. The record consist of the testimony of Kerry Hale; the testimony of Lester Gambrel; the testimony of Nena Debard; claimant's exhibits A-B ; and Employer's Exhibits 1-7.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures satellite dishes and antennas at its facility located in Burlington, Iowa. The claimant was hired on March 25, 2013, as a full-time assembler. Her last day of work was October 4, 2013. She was terminated on October 4, 2013, for violation of the employer's attendance policy.

The claimant's attendance record is as follows:

May 13, 2013	Absent	Illness
May 21, 2013	Left Early	Illness
June 15, 2013	Tardy	
August 13, 2013	Absent	Illness
August 14, 2013	Absent	Illness
September 13, 2013	Tardy	
October 4, 2013	Tardy	
October 4, 2013	Tardy	Late returning from Break

(Exhibit 3)

The claimant was given a warning about her attendance on August 19, 2013, and September 23, 2013. The claimant knew her job was in jeopardy due to her attendance.

### **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). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). 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. Although some of the claimant's absences were due to personal illness and therefore excused absences under Iowa

law, the claimant had four instances of tardiness that were due to personal reasons and therefore not excused absences. Four instances of tardiness in less than five months is excessive. The claimant had been warned about her attendance and knew her job was in jeopardy. Since the employer has shown excessive unexcused absenteeism, benefits are denied.

**DECISION:**

The decision of the representative dated October 24, 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.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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