

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTINE A BUERKLIN**  
Claimant

**APPEAL NO. 12A-UI-04899-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APAC CUSTOMER SERVICES OF IOWA**  
Employer

**OC: 03/11/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

APAC Customer Services of Iowa filed a timely appeal from a representative's decision dated April 17, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on May 22, 2012. The claimant participated. The employer participated by Ms. Turkessa Newsone.

**ISSUE:**

At issue is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Kristine Buerklin was employed by APAC Customer Services of Iowa from November 15, 2011, until March 12, 2012, when she was discharged from employment. Ms. Buerklin worked as a full-time customer service representative and was paid by the hour.

The claimant was discharged because she was tardy on one occasion on March 12, 2012, during a training program. Under company policy, employees are expected to maintain 100 percent attendance during training and are subject to discharge if they miss any time during the training program. The claimant had been warned when she was required to leave early on one occasion one-half hour early.

The incident that caused the claimant's discharge took place when the claimant was two hours' tardy because of unexpected car trouble on the way to work. The claimant was unable to call her employer due to lack of a telephone but arrived to work as soon as possible.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does 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.

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. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the 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 App. 1992).

The evidence in this case establishes the claimant was discharged due to an incident that took place on March 12, 2012, when the claimant reported to work late due to unforeseeable car problems on the way to work and the claimant's inability to telephone the employer due to lack of a telephone. The sole basis for the claimant's discharge was the fact that the claimant was in a training program at the time and under company policies employees in training are required to maintain 100 percent attendance. The claimant failed to maintain the 100 percent attendance through no fault of her own.

While the decision to terminate the claimant may have been a sound decision from a management viewpoint, intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated April 17, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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