

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRITTANY K SCHMIDT**  
Claimant

**APPEAL NO. 12A-UI-14785-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA VETERANS HOME**  
Employer

**OC: 11/18/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant, Brittany Schmidt, filed an appeal from a decision dated December 13, 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 March 28, 2013. The claimant participated on her own behalf and was represented by Scott Hall. The employer, Iowa Veterans Home (IVH), participated by Nurse Supervisor Renee Gruetzmacher and was represented by Scott Hall.

**ISSUE:**

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

**FINDINGS OF FACT:**

Brittany Schmidt was employed by IVH from February 16, 2011 until November 21, 2012 as a full-time residential treatment worker working 2:00 p.m. until 10:30 p.m. The claimant had received a number of warnings for absences not covered by any paid leave. The final warning was a five-day suspension on July 11, 2012, which notified her that her job was in jeopardy.

On November 2, 2012, Ms. Schmidt called in absent. There had been shots fired in her neighborhood and one bullet had struck her house. The police would not release the crime scene, including the claimant's car, until approximately 5:30 p.m. After that the bullet had to be removed from the side of her house and the landlord came to inspect the premises. She again notified the employer she would not be in at all for that shift because the incident had upset her to the point where she did not feel safe and did not want to leave the house.

## 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.

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 was discharged for excessive, unexcused absenteeism. She had used all of her available sick leave and vacation for personal reasons and was being issued the progressive disciplinary action because she kept taking time off without the accumulated hours to cover the shifts.

The issue is whether the final occurrence constitutes misconduct. There must be a current, final act of misconduct which precipitates the discharge before disqualification may be imposed under 871 IAC 24.32(8). The administrative law judge cannot consider the claimant's final absence to be without justifiable cause. She would have been several hours late in any event

because of the delay in releasing her car, but the overall experience would be traumatic enough to constitute good cause for missing work. The absence was properly reported as required and was only considered unexcused because the claimant did not have any leave time to cover it. Disqualification may not be imposed.

**DECISION:**

The representative's decision of December 13, 2012, reference 01, is reversed. Brittany Schmidt 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