

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAFELLA V FOSTER**

Claimant

**APPEAL NO. 14A-UI-07443-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APAC CUSTOMER SERVICES INC**

Employer

**OC: 06/22/14**

**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

APAC Customer Services, Inc. filed a timely appeal from a representative's decision dated July 11, 2014, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on August 12, 2014. Claimant participated. The employer participated by Ms. Lisa Kubot, Hearing Representative, Turkessa Newsome, Human Resource Generalist, and Ms. Jackie Atkins, Team Lead. Employer's Exhibits A, B, C, D, and E were received into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for 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: Rafella Foster was employed by APAC Customer Services, Inc. from February 3, 2014 until June 24, 2014 when she was discharged for exceeding the number of attendance infraction points allowable under the company's no-fault attendance point system. Ms. Foster was employed as a full-time customer service representative and was paid by the hour. Her immediate supervisor was Ms. Jackie Atkins, Team Lead.

Ms. Foster was discharged when she exceeded the 12½ attendance infraction points allowed company employees during a rolling six-month period under the company's attendance policy. Ms. Foster was aware of the policy and had had received warnings from the employer. Employees are assessed one infraction point per each absence and are subject to discharge if they accumulate 12½ or more infraction points during a six-month rolling period. The oldest infraction point rolls off after six months and absences for medical reasons can be combined if consecutive to result in a one point assessment of infraction points.

The final attendance infraction that caused the claimant's discharge took place on June 19 and June 20, 2014. On those dates Ms. Foster called in properly to report her impending absence due to illness. On Monday, June 23, 2014, the claimant called in because of a dental issue. The employer subsequently discharged claimant for exceeding the personal number of infraction points allowed under the company's no-fault attendance point system.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 a discharge matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not

necessarily be serious enough to warrant the denial of unemployment insurance 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. of Appeals 1992).

In order for the claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past absences and warnings, however, the evidence must first establish that the most recent absence that prompted the employer to discharge the employee was unexcused. See 871 IAC 24.32(8). Absence related to issues of personal responsibilities such as transportation and oversleeping are considered unexcused. Absences related to illness are considered excused providing the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that Ms. Foster followed the employer's attendance policy in connection with her absences on June 19, 20 and 23, 2014. The policy required that an employee provide notification to the employer in advance of the beginning of the work shift if they are unable to report for work due to illness. Ms. Foster properly reported to the employer that she could not report to work because she was ill. Under these circumstances, the claimant's final absences are considered excused for the purposes of the unemployment insurance law and do not serve to disqualify the claimant from the receipt of unemployment insurance benefits.

While the decision to terminate Ms. Foster from her employment may have been a sound decision from a management viewpoint, for the above-stated reasons, the administrative law judge concludes that the claimant's discharge from employment took place under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated July 11, 2014, reference 01, is affirmed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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