

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY S CARLSON
Claimant

APPEAL NO. 14A-UI-00950-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREATER ALTOONA COMMUNITY
Employer

OC: 01/06/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated January 15, 2014, reference 01, that held she was discharged for repeated tardiness on October 29, 2013, and benefits are denied. A hearing was held on February 27, 2014. The claimant participated. Joe Thiry, Accountant, Elie Hansen, Onsite Director, Sarah Wright, Assistant Onsite Director, and Jennifer Shur, Kids Club Director, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on September 9, 2013 and last worked as a full-time Kids club lead teacher on October 28. The claimant received the employer attendance policy that provides for discipline.

The employer issued claimant a written warning on September 25 for being late to work, and two written warnings for being late (October 4/14) on October 14. The claimant received these warnings. She offered excuses about being locked-out of the building and having to pick-up that the employer refutes.

Claimant was absent from work on October 25. She contends she was excused that day so she could go to court. The employer has employees submit a written request to be off work and there was none. Claimant was directed to report for work at the employer Four-Mile location on October 29. She had difficulty in finding the location and she reported late.

The employer discharged claimant on October 29 for her being late for work in light of prior warnings.

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 administrative law judge concludes employer established misconduct in the discharge of the claimant on October 29, 2013, for excessive "unexcused" tardiness.

The employer failed to follow the hearing notice instructions and present written documentation in support of its testimony claimant was disciplined and terminated for being late to work. Claimant does admit receiving separate disciplines on September 25 and October 14 for being late on three occasions. The reasons she offered for being late are not for excusable reasons as offered by the employer.

The employer policy is for an employee to make a written request for a day-off and have it approved. Claimant did not have written permission for her October 25 absence. She admits she was late in reporting for work on October 29. It was her responsibility to locate the Four-Mile facility and arrive on time. While the October 25 and October 29 incidents might not be as egregious as though the earlier late to work issues, job disqualifying misconduct is established in light of claimant's brief employment period.

DECISION:

The decision of the representative dated January 15, 2014, reference 01, is affirmed. The claimant was not discharged for misconduct in connection with employment on October 29, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs