

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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GOOD SAMARITAN SOCIETY INC  
c/o TALX – UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-02965-SWT  
OC: 02/12/06 R: 04  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 27, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 3, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Paula Clarke participated in the hearing on behalf of the employer with a witness, Pam Lundgren.

FINDINGS OF FACT:

The claimant worked full time for the employer at a certified nursing assistant from November 25, 2003, to February 5, 2006. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer two hours before the start of their shift if they were not able to work as scheduled. The claimant had a history of absenteeism and tardiness for which she had been warned.

The claimant received a final warning on January 10, 2006, after she was absent from work due to illness on November 26, due to her child's illness on December 5, due to her illness on December 21, and due to her child's illness on December 31. She properly reported these absences. She was warned that could be discharged for any additional absences.

The claimant was scheduled to work starting at 2:00 p.m. on February 6, 2006. When she about to leave at about 1:30 p.m., she discovered that she did not have her car keys because her husband had mistakenly taken her keys to work with him. She called the employer immediately and informed the employer she did not have any way of getting to work. She was informed that she would be terminated if she did not report to work. The claimant called her husband to get him to bring the keys back. He came home at about 3:00 p.m. and called the employer to find out if the claimant was needed. The person who took the call told the claimant's husband that she would check. The director of nursing found a CNA who was willing to punch out and leave so the claimant could come into work and avoid termination. The director of nursing called the claimant within ten minutes of her husband's phone call. The claimant's husband, however, had already left and took the claimant's keys with him.

When the claimant reported to work on February 7, 2006, the employer discharged her for excessive unexcused absenteeism.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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:

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

Prior to February 6, 2006, the claimant was absent from work due to her own illness or the illness of one of her children and properly reported her absences. While the employer treated them as unexcused, for unemployment insurance purposes they would not be considered excused.

In regard to the final incident, the claimant notified the employer as soon as she discovered she did not have her keys. It is difficult to understand how the claimant's husband could come all the way home and then leave again taking the car keys with him. You can fault the claimant insisting that her husband leave her the keys, especially since she knew her job was in jeopardy due to her prior warnings. Her conduct, however, does not rise to the level of willful and substantial misconduct required to disqualify a claimant from receiving benefits.

#### DECISION:

The unemployment insurance decision dated February 27, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/tjc