

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIELLE SMITH**  
Claimant

**APPEAL NO: 11A-UI-11265-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLEN MEMORIAL HOSPITAL**  
Employer

**OC: 07/31/11  
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a - Discharge for Misconduct  
871 IAC 24.32(7) - Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

Danielle Smith (claimant) appealed an unemployment insurance decision dated August 24, 2011, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Allen Memorial Hospital (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 20, 2011. The claimant participated in the hearing with Paralegal Danielle Smith. The employer participated through Megan Combs, Human Resources Business Partner and Adella Bajrektarevic, Assistant Manager in Housekeeping and Multi-Service Associate. Employer's Exhibit One through Five and Claimant's Exhibit A was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time housekeeper from April 11, 2006 through August 2, 2011. She was discharged from employment due to excessive absenteeism with a final incident on August 1, 2011 when she was a no-call/no-show. A no-call/no-show is a second level disciplinary warning.

The claimant's last written warning for attendance was issued to her on October 28, 2010 and she was advised any additional infraction would result in termination. This was a third level warning which remains on an employee's record for one year. She received a first level warning for attendance on July 1, 2010 and a second level warning on July 27, 2010.

The employer's attendance policy allows an employee to have six absences and incidents of tardiness each year before it is counted against their record. The claimant had intermittent leave under the Family Medical Leave Act beginning January 4, 2011 and all of these absences were excused and not counted. She was off work due to childbirth from April 26, 2011 through July 4, 2011 and these absences were also excused. The claimant returned to work on July 5, 2011 and her shift began at 6:30 a.m. The employer's time records demonstrate the claimant was only on time once in the 14 days she worked from July 12, 2011 to July 31, 2011. Most of these late punches did not count against the claimant because the employer allows seven minutes in which employees can be late for their shifts without it counting against them. However, the claimant exceeded the seven minute window on July 18, 22 and 30, 2011. The claimant had exhausted her six absences and was a no-call/no-show on August 1, 2011. She denied knowing that she was scheduled to work that day because she said she never checked the schedule. The employer discharged her on August 2, 2011.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The claimant was discharged on August 2, 2011 for excessive unexcused absenteeism.

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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

The claimant contends she should not have been fired because she was scheduled without notice. However, the same schedule had been posted since the claimant returned from medical leave on July 5, 2011. She produced evidence that the union contract provides that the employer will not change the basic work week of any employee unless the change has been discussed with that employee prior to the posting of the work schedule. It would be really unusual for an employee not to check her schedule after returning from a six-week absence. The claimant's regular schedule had changed and the evidence confirms she was fully aware of that fact.

According to the claimant, prior to her medical leave she was always scheduled to work on Wednesdays but after returning, she was not scheduled to work on July 6, 2011 and July 20, 2011, both of which were Wednesdays. The claimant did fail to report to work on July 18, 2011 when she was scheduled; she was contacted by the employer and arrived late for work. The employer witnesses testified that the claimant's supervisor reminded her to always check the schedule. The claimant denies the supervisor reminded her to check the schedule, which is doubtful. However, even if she was not reminded, common sense would dictate that she check the schedule on her own since she was supposed to work that day and was unaware of it.

The employer has met its burden and has established that the claimant was warned that further unexcused absences could result in termination of employment. The final absence was not excused and the final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are denied.

#### **DECISION:**

The unemployment insurance decision dated August 24, 2011, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been

paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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