

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMY J ROSE**  
Claimant

**APPEAL NO. 08A-UI-10164-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HCM INC**  
Employer

**OC: 08/24/08 R: 02**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Amy J. Rose filed a timely appeal from an unemployment insurance decision dated October 29, 2008, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held November 21, 2008 with Ms. Rose participating. Director of Nursing Nancy Upmeyer participated for the employer, HCM, Inc. Employer Exhibits One through Six were admitted into evidence.

**ISSUE:**

Was the claimant discharged for misconduct in connection with her employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Amy J. Rose was employed by HCM, Inc. from September 20, 2006 until she was discharged June 4, 2008. She last worked as a certified nursing assistant. She was discharged for poor attendance.

The final incident leading to the discharge was Ms. Rose's absence without contact on June 3, 2008. Ms. Rose had not returned to Iowa City, the town in which she worked, from Wever, Iowa. She had also been tardy on May 29, 2008 and absent without contact on May 5, 2008. Shortly after the May 5 absence, Director of Nursing Nancy Upmeyer gave Ms. Rose an oral counseling in which she said further instances of absence without contact would lead to discharge.

Ms. Rose had been tardy on April 30 and April 8, 2008 as well as on March 15, 2008. She had been absent without contact on March 6, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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.

Excessive unexcused absenteeism, a concept which includes tardiness, is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7). The evidence before the administrative law judge establishes three instances of absence without contact in less than three months and four instances of tardiness within the same period of time. Ms. Rose testified that she did not recall ever being tardy. The employer's evidence was based upon company attendance records. The administrative law judge finds these records which are also used for pay and tax purposes, to be more persuasive. Benefits must be withheld.

**DECISION:**

The unemployment insurance decision dated October 29, 2008, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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