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

SUSAN CONNOR
3926 RICHLAND DR
WATERLOO IA 50701-3117

ABCM CORPORATION
PO BOX 436
HAMPTON IA 50441-0436

Appeal Number: 06A-UI-03793-ET
OC: 03-20-05 R: 03
Claimant: Appellant (2)

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, 4th 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.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 24, 2006, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 24, 2006. The claimant participated in the hearing. Kara Mayner, Human Resources and Tom Kelleher, Director of Nursing, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time respiratory therapist for ABCM Corporation from July 10, 2005 to February 21, 2006. The employer's policy states that four incidents of tardiness within 90 days would result in a written warning and three written warnings would result in suspension or termination. The claimant was scheduled to begin work at 10:00 a.m. or 2:00 p.m. On August 11, 2005, she arrived at 10:49 a.m.; on August 13, 2005, she arrived at 2:03 p.m.; on August 14, 2005, she arrived at 2:05 p.m.; on September 16, 2005, she arrived at 10:05 a.m.; and on October 13, 2005, the employer issued a written warning to the claimant about her attendance. On December 21, 2005, she arrived at 10:04 a.m.; on December 22, 2005, she arrived at 10:03 a.m.; on December 24, 2005, she arrived at 6:56 p.m.; on December 28, 2005, she arrived at 10:53 a.m.; on January 3, 2006, she arrived at 10:08 a.m.; and on January 4, 2006, the employer issued a written warning to the claimant about her attendance. On January 5, 2006, she arrived at 10:05 a.m.; on January 19, 2006, she arrived at 2:04 p.m.; on January 22, 2006, she arrived at 2:02 p.m.; on February 8, 2006, she arrived at 10:07 a.m.; on February 11, 2006, she arrived at 2:07 p.m.; and on February 17, 2006, she arrived at 10:06 a.m. The claimant was not scheduled February 18 or 19, 2006, and the employer planned to terminate her employment for tardiness February 20, 2006, but she called in to report she would not be in because of a dental problem. Consequently, the employer completed the third written warning and then discharged the claimant by phone February 21, 2006. The claimant testified both written warnings indicated it was her first one and she thought the first one dropped off so she did not know her job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying job misconduct. 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). While the claimant was tardy 15 times, only three of those incidents were more than eight minutes in length. Additionally, the employer indicated both written warnings were the first and consequently it was not unreasonable for the claimant to believe her job was not in jeopardy because she still had another written warning and possible suspension before termination would occur. Although not condoning the claimant's tardiness, being a few minutes late 12 times between August 11, 2005, and February 17, 2006, does not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The March 24, 2006, reference 03, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/tjc