

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**SAMANTHA J FORD**  
Claimant

**APPEAL NO. 15A-UI-12387-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TSI ENTERPRISES INC**  
Employer

**OC: 10/04/15**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

TSI Enterprises Inc. filed a timely appeal from a representative's decision dated November 4, 2015, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that the claimant was dismissed from work on March 8, 2015 for no disqualifying reason. After due notice was provided, a telephone hearing was held on November 25, 2015. Claimant participated. The employer participated by Ms. Charity Stone, Manager. Employer's Exhibits A, B and C were admitted into the record.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all the evidence in the record, the administrative law judge finds: Samantha Ford was employed by TSI Enterprises Inc. from January 14, 2015 until March 10, 2015, when she was discharged from employment. Ms. Ford was employed as a full-time general laborer and was paid by the hour.

Ms. Ford was discharged based upon the company's attendance policy that provided for the discharge of employees with less than six months of service if the employer believed that the employee was showing a distinct pattern of repeated absences, tardies, leaving early or failure to call in. Because Ms. Ford had accumulated five instances of being absent from work or leaving work early on five occasions during the six weeks that she was employed by the company. On each occasion Ms. Ford had called off work ill due to the illness of herself or family member or had been sent home by a supervisor because of illness. The final occasion that caused the claimant's discharge was when Ms. Ford was unable to report to work due to illness, properly notifying her employer of her impending absence that day. Because of the recurrent nature of the claimant's absences due to illness, the employer believed that her pattern of repeated absences warranted discharge from employment under company policy. Prior to her discharge the claimant had not been warned that her employment 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(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.

In discharge cases, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what

misconduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons, or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation.

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation or oversleeping are considered unexcused. Absences related to illness are considered excused provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness or leaving early are forms of absence. The employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

The evidence in the record establishes that although the claimant had been absent or left work early on a number of occasions during the short period that she was employed, her absences were due to the illness of herself or family members and were properly reported to the employer. Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that the claimant's absences were therefore excused under the provisions of the Employment Security Law and do not constitute disqualifying misconduct in connection with the employment. While the decision to terminate Ms. Ford may have been a sound decision from a management viewpoint, the claimant's discharge took place under non-disqualifying conditions. The claimant is eligible to receive unemployment insurance benefits provided that she meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated November 4, 2015, reference 01, is affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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