

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHRYN HALL

Claimant

APPEAL NO: 11A-UI-11627-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAHL MOTORS DAVENPORT INC

Employer

OC: 07-03-11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 25, 2011, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 28, 2011. The claimant participated in the hearing. Tim Thompson, General Sales Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

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 internet coordinator for Dahl Motors Davenport from September 13, 2010 to June 23, 2011. The claimant went in early June 23, 2011, to talk to her supervisor, Kelly O'Brien, because her 14-year-old son was in trouble but Ms. O'Brien was not there yet. She left a voice mail message for her and also asked another employee to have Ms. O'Brien call her. She later spoke to Ms. O'Brien and asked if she could have June 23 and June 24, 2011, off and return Monday, June 27, 2011. Ms. O'Brien said she would have to speak to General Sales Manager Tim Thompson and call the claimant back. When she called back later that day Ms. O'Brien told the claimant that her request for time off had been denied and the employer was going to have to let her go. The claimant spoke to her former supervisor June 27, 2011, after he called to find out why she was not at work and when she stated her employment had been terminated he thought she was mistaken and encouraged her to contact Ms. O'Brien again. The claimant called Ms. O'Brien to double check on the status of her employment and after Ms. O'Brien spoke to Mr. Thompson again she called the claimant back and told her that the termination stood.

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 § 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 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 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). 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). While the claimant's absence June 23, 2011, was related to a personal situation involving her son, she had an excellent attendance record while working for the employer. She had never been tardy and only had one absence due to a properly reported illness. The claimant credibly testified she did not ask for a leave of absence but rather for two days off to attend to her son's issues. She planned to return to work Monday, June 27, 2011, had she been given that opportunity. Although the reason for her June 23, 2011, was personal in nature, the employer has not demonstrated excessive unexcused absenteeism on the claimant's part during her employment. Consequently, the administrative

law judge concludes the claimant was discharged for no disqualifying reason. Therefore, benefits are allowed.

DECISION:

The August 25, 2011, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs