

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIE HERRMANN**  
Claimant

**APPEAL NO: 12A-UI-12252-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE TJX COMPANIES INC**  
Employer

**OC: 09/16/12**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-2-a - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Marie Herrmann (claimant) appealed an unemployment insurance decision dated October 5, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from The TJX Companies, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 5, 2012. The claimant participated in the hearing. The employer participated through Karin Barfels, Assistant Manager. Employer's Exhibits One through Three were 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 part-time merchandise associate from October 5, 2010 through September 19, 2012. She was discharged per the employer's progressive disciplinary policy after she received three written warnings for attendance within 12 months. The claimant received a written warning on July 9, 2012 for absenteeism on July 9, 2012 for six absences. She received a second written warning on that same date for tardiness for eight instances of tardiness. The claimant signed both written warnings which advised her that a third written warning within 12 months would lead to termination.

Subsequent to the written warnings on July 9, 2012, the claimant was absent on July 15 and tardy on July 27. The final incident occurred on September 10, 2012 when she was late for work. She was discharged on September 19, 2012 after she received a third written warning for attendance within a 12-month period. The delay in discharge was due to her part-time status. She had been previously counseled for both tardiness and absenteeism on May 16, 2012.

## 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 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 to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on September 19, 2012 due to the employer's progressive disciplinary policy. The employer's handbook provides that three written warnings within a 12-month period will result in termination. The claimant was aware of the policy and knew that she had already received two written warnings as of July 9, 2012. Her continued tardiness shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated October 5, 2012, 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

sda/pjs