

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAWN M PECK**  
Claimant

**APPEAL NO. 12A-UI-04094-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QWEST CORPORATION**  
Employer

**OC: 05/29/11  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated April 10, 2012, reference 04, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on May 3, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. John O'Fallon participated in the hearing on behalf of the employer with a witness, Matthew Powell.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full-time for the employer as a sales and service associate from August 8, 2011, to March 14, 2012. Her hours were from 9:30 a.m. to 6 p.m., Monday through Friday. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled.

The claimant received a written warning on September 15 for being late for work. She had no excuse for the tardiness. On October 26, 2011, she received a warning of dismissal for being late for work again. She had no excuse for the tardiness. On December 9, 2011, she received a restated warning of dismissal. She had been eight minutes late on November 28 without a legitimate excuse. The claimant was 15 minutes late on December 22, 2011, and 17 minutes on January 12. The January 17 tardy was due to her husband taking the keys to the vehicle she was driving to work. The reason for the December 22 tardy is unknown. She was issued a restated warning of dismissal on January 16, 2012, and was informed that she was subject to termination for any additional tardiness.

On March 12, 2012, the claimant was four minutes late returning from lunch. While she claims she returned to work on time but did not get logged in until later, the evidence does not support this. The claimant did not have a legitimate excuse for her lateness after lunch.

On March 14, 2012, the claimant's manager met with her and reviewed the past discipline with her and the final tardy. The purpose of the meeting was to gather facts to decide what discipline would

be issued. The claimant, however, did not return to work after March 14, 2012, because she was sure that she was going to be discharged.

The claimant returned on March 21, 2012, and again met with her manager and was informed that she was discharge for excessive unexcused tardiness.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I am convinced that the claimant was late back from lunch on March 12. The claimant did not have legitimate excuses for her repeated tardiness.

871 IAC 24.32(7) provides: "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."

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated April 10, 2012, reference 04, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw