

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CATHERINE R LOYD**  
Claimant

**APPEAL NO. 07A-UI-01296-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APAC CUSTOMER SERVICES OF IOWA  
LLC**  
Employer

**OC: 12/31/06 R: 04  
Claimant: Respondent (2)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absences  
Iowa Code section 96.3(7) – Recovery of Overpayment

**STATEMENT OF THE CASE:**

Apac Customer Services of Iowa filed a timely appeal from the January 22, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 1, 2007. Claimant Catherine Loyd participated. Benefits Administrator Turkessa Hill represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment, based on excessive unexcused absences, that disqualifies her for unemployment insurance benefits.  
Whether the claimant has been overpaid benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Catherine Loyd was employed by Apac Customer Services of Iowa as a part-time Customer Service Representative from November 8, 2004 until January 2, 2007, when Team Leader Jason Bartle and Operations Manager April Vogt discharged her for attendance. The employer has a written attendance policy that required Ms. Loyd to notify the employer prior to the start of her shift if she needed to be absent. Ms. Loyd was aware of the policy.

The final absence that prompted the discharge occurred on December 29, 2006, when Ms. Loyd was absent due to a lack of transportation. Ms. Loyd had three additional absences in December. On December 15, Ms. Loyd was absent due to a lack of child care. On December 26, Ms. Loyd was absent due to a lack of transportation and failed to notify the employer. On December 27, Ms. Loyd was absent due to a lack of transportation. Ms. Loyd's absences on December 26, 27, and 29 were due to problems with her car's brakes. The problem was discovered on December 26, while Ms. Loyd was at her husband's parents' home in Cedar Rapids. Ms. Loyd and her family were unable to travel back to the Quad Cities in their

car. Ms. Loyd and her husband eventually borrowed money from her husband's father and rented a car.

Ms. Loyd's prior absences for the period of August through the end of November 2006 were as follows. On August 3, Ms. Loyd was absent for personal reasons. On September 20, 22, and October 3, Ms. Loyd was tardy for personal reasons. On October 5, Ms. Loyd received a formal warning for tardiness and was advised that she needed to have perfect attendance until January 3, 2007. Ms. Loyd had no additional attendance issues in October and no further attendance issues until December 15.

Ms. Loyd established a claim for benefits that was effective December 31, 2006 and has received benefits totaling \$825.00.

### **REASONING AND CONCLUSIONS OF LAW:**

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 proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for Ms. Loyd's absences to constitute misconduct that would disqualify her from receiving unemployment insurance benefits, the evidence must establish that her *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 and oversleeping are considered unexcused. On the other hand, 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 is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that all four of Ms. Loyd's absences during December were unexcused absences under the applicable law. These four unexcused absences all occurred within a two-week period. Three of these unexcused absences occurred within a four-day period. One of these unexcused absences was a "no-call, no-show" absence. Ms. Loyd had at least one formal reprimand for attendance and had been specifically warned that her attendance would be under increased scrutiny through the end of the year. The administrative law judge concludes that Ms. Loyd's four unexcused absences within a two-week period were excessive. The problem with Ms. Loyd's brakes was a problem that most likely could have been avoided through proper routine vehicle maintenance. Once Ms. Loyd realized there was a problem with her transportation, she had an obligation to notify the employer and resolve the problem in a timely fashion. The evidence indicates that Ms. Loyd delayed notifying the employer by at least one day and after she had already missed a shift. The evidence indicates that Ms. Loyd had access to resources that would have allowed her to return to the Quad Cities in a more timely fashion.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Loyd was discharged for misconduct. Accordingly, Ms. Loyd is disqualified for benefits 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. The employer's account shall not be charged for benefits paid to Ms. Loyd.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because Ms. Loyd received benefits for which she has been deemed ineligible, the benefits she received constitute an overpayment that Ms. Loyd must repay to Iowa Workforce Development. Ms. Loyd is overpaid \$825.00.

**DECISION:**

The Agency representative's January 22, 2007, reference 01, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The claimant is overpaid \$825.00.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs