

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TEEMEEKA L WILLIAMS
Claimant

APPEAL NO. 09A-UI-17259-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBUQUE COUNTY
Employer

OC: 10/18/09
Claimant: Appellant (1)

Section 96.5-2-A – Misconduct.

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 2, 2009, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 22, 2009. Claimant participated. Employer participated by Amy Bemis, Assistant Director of Nursing. The record consists of the testimony of Amy Bemis; the testimony of Temeeeka Williams; and Employer's Exhibits 1-15.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case, Dubuque County, owns and operates a nursing home facility called SunnyCrest. The claimant worked as a full-time certified nursing assistant. She was terminated on October 15, 2009, for excessive absenteeism and tardiness.

The final incident that led to the claimant's termination occurred on October 10, 2009. The claimant was one hour and thirty-one minutes late for her shift that day. The claimant did not drive and the cab she called had not arrived on time.

The claimant and the employer had entered into what was called a last-chance agreement on May 6, 2009. The claimant had progressed through all of the disciplinary steps for attendance problems as provided for in the collective bargaining agreement between the county and its employees. The claimant agreed that any further issues with attendance would lead to termination.

Between the time the claimant and the employer entered into the last-chance agreement, the claimant had three absences on June 20, 2009; September 17, 2009; and October 4, 2009.

She also had twenty-one instances of tardiness. The employer kept trying to work with the claimant to improve her attendance. The claimant believes she was absent due to illness but her tardiness was due to transportation problems.

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.

Misconduct that leads to disqualification for unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness. Absence due to matters of "personal responsibility" e.g. transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984).

The evidence in this case established that the claimant was terminated for excessive unexcused absenteeism, primarily tardiness due to transportation problems. On May 6, 2009, the claimant knew that her continued tardiness and absenteeism would lead to termination. The employer continued to work with the claimant but she had twenty-one instances of tardiness between May 6, 2009, and her final tardiness on October 10, 2009. The employer has established misconduct and benefits are denied.

DECISION:

The decision of the representative dated November 2, 2009, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

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