

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**SHELLANE M PASCHAL**  
Claimant

**VONACHEN SERVICES INC**  
Employer

**APPEAL 15A-UI-00032-JCT**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 11/30/14**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Absenteeism  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the December 23, 2014 (reference 02) unemployment insurance decision that allowed benefits based upon the claimant's separation. The parties were properly notified about the hearing. A telephone hearing was held on January 27, 2015. The claimant did not participate. The employer participated through Greg Turner and was represented by Stuart Larimer with UC Advantage. Employer Exhibit One was received into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part time as a cleaner and was separated from employment on December 4, 2014 when she was discharged by Greg Turner for excessive absenteeism.

The employer has an attendance policy that states employees must call-in two hours prior to a shift they miss, and identifies the need for consistent attendance and punctuality. The employer was made aware of this policy upon time of hire (exhibit one).

Prior to the claimant's discharge, she had been previously counseled for attendance on October 29, 2014 and November 3, 2014. She was placed on a final warning for attendance on November 4, 2014. The final incident occurred when the claimant called her supervisor prior to her shift on November 28, 2014 reporting she was sick. The employer testified the claimant properly called off her shift. The employer did not receive a doctor's note but had no evidence to contradict the claimant's assertion of being ill. When she arrived to work on November 29 she was suspended pending investigation. On December 4, 2014 Greg Turner discharged her based on her excessive absenteeism.

A fact finding interview was held on December 18, 2014. There is no evidence that the employer nor its representative attended the fact finding interview. The claimant is eligible for weekly benefit amounts of \$159.00, and has not yet been paid any benefits.

**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.

Iowa Admin. Code r. 871-24.32(1)a, (7) 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

(7) Excessive unexcused absenteeism. 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); See *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law."

An employer's attendance policy is not dispositive of the issue of qualification for unemployment insurance benefits. There is no question the claimant had been counseled for prior attendance violations; however, a reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. Because the claimant's last absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. Since the employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined, benefits are allowed.

Accordingly, the claimant is allowed benefits and has not been overpaid benefits.

**DECISION:**

The December 23, 2014 (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

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