

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ARICIA S BUCHANAN MARSHALL**  
Claimant

**CARE INITIATIVES**  
Employer

**APPEAL NO. 14A-UI-09399-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/17/14**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated September 9, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 20, 2014. Claimant participated personally and with witness Peggy Morgan. Employer participated by Alyce Smolsky, with witnesses Cheryl Dreyer and Lori Bellinger. Employer's Exhibits One through Five were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 19, 2014. Employer discharged claimant on August 19, 2014 because of excessive absences and tardiness.

On May 26, 2014 claimant received documentation as to revised attendance policies. Included within the policy was a statement that a no-call/no-show would result in a final written warning. Subsequent to receiving a final written warning, the attendance policy stated that any additional occurrence of unplanned absences within the next 90 days would result in consequences up to and including termination. On August 11, 2014 claimant received a final written warning for a no-call/no-show on August 7, 2014.

On August 18, 2014 claimant had a court date for a traffic ticket. She had remembered the date, but had not remembered the time as she was very busy. At 3:00 a.m. on August 18, 2014 the claimant called in to work to state that she would not be there. Claimant's start time was set for 6:00 a.m. that morning, so claimant did call in over two hours before her start time. Claimant was to work from 6:00 a.m. to 2:00 p.m. that day. Her court date was 1:00 p.m. Claimant did not believe she would have been treated well if she worked until noon on her shift and then gone to court, as she'd believed she had been treated poorly in the past.

Claimant was terminated from work on August 19, 2014 for attendance issues, but had her termination changed to a quit a couple of days later when she brought in paperwork showing that she had been at court on the previous day.

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

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 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).

Iowa Admin. Code r. 871-24.32(4), (8) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. The Iowa Supreme Court has opined that one unexcused absence is not misconduct even when it followed nine other excused absences and was in violation of a direct order. Sallis v. EAB, 437 N.W.2d 895 (Iowa 1989). Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984), held that the absences must be both excessive and unexcused. The Iowa Supreme Court has held that excessive is more than one. Three incidents of tardiness or absenteeism after a warning has been held misconduct. Clark v. Iowa Department of Job Service, 317 N.W.2d 517 (Iowa Ct. App. 1982). While three is a reasonable interpretation of excessive based on current case law and Webster's Dictionary, the interpretation is best derived from the facts presented.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning absenteeism and tardiness. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant had been given numerous warnings about her attendance issues. She received a document concerning her court date weeks in advance of the date. Claimant chose not to research the date and time of the court date to minimize the amount of work missed. The court time wasn't to occur until 1:00 p.m., yet claimant chose to miss the entire day of work. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated September 9, 2014, reference 01, 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.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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