

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE A GOLDNER
Claimant

APPEAL NO. 06A-UI-10576-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANNETT HOLDINGS INC
Employer

OC: 04/02/06 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Julie Goldner, filed an appeal from a decision dated October 31, 2006, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 14, 2006. The claimant participated on her own behalf. The employer, Annett Holdings, Inc. (Annett), participated by Human Resources Generalist Erin Turnis and was represented by TALX in the person of Jessica Meyer. Exhibits Two and Three were admitted into the record

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Julie Goldner was employed by Annett from June 29 until August 15, 2006. She was a full-time detention assistant working 8:00 a.m. until 5:00 p.m. At the time of hire the claimant received an electronic copy of the employer's policies.

The claimant was chronically tardy to work and Supervisor Cindy Burch spoke with her about the need to come to work in a timely manner. The tardiness ranged from a few minutes to two hours. Ms. Goldner was tardy 58 minutes on August 11, 2006, for reasons she cannot remember, and 40 minutes on August 15, 2006, when she overslept. After these two final incidents, she was discharged by Ms. Burch.

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.

871 IAC 24.32(7) provides:

(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 claimant had been tardy to work on a chronic basis throughout the short period of her employment. She was advised she needed to be at work on time, but the problem continued. The final two incidents which precipitated the decision to discharge was a late arrival of nearly an hour for reasons which the claimant cannot establish, and a 40 minute late arrival due to oversleeping. Matters of purely personal consideration, such as oversleeping, are not considered an excused absence. Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). The claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

DECISION:

The representative's decision of October 31, 2006, reference 02, is affirmed. Julie Goldner is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided, she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw