

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MAKINZY J GRADY**  
Claimant

**APPEAL NO. 10A-UI-11844-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OPPORTUNITY VILLAGE**  
Employer

**Original Claim: 07/04/10  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated August 13, 2010, reference 01, which denied benefits based upon her separation from Opportunity Village. After due notice was issued, a telephone hearing was held on October 7, 2010. The claimant participated personally. The employer participated by Robin Smith, former supervisor. Employer's Exhibits 1 through 19 were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Makinzy Grady was employed as a personal care assistant for Opportunity Village from April 9, 2007, until July 8, 2010, when she was discharged for repetitive tardiness after being warned. Ms. Grady received a final warning on June 3, 2010, for excessive tardiness and was told that her next attendance infraction would result in her termination from employment. The claimant was discharged when she arrived for work 30 minutes late on July 8, 2010. The claimant, at that time, stated that she had "overslept."

It is the claimant's position that she should not have been discharged, as some of her attendance infractions were caused by factors beyond her own control, such as transportation difficulties.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

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 Supreme Court of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct. The Court held that the concept includes tardiness, leaving early, etc. The Supreme Court of Iowa in the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) held that absence due to matters of "personal responsibility," such as transportation problems and oversleeping, are considered unexcused.

Based upon the application of the facts of this case to the appropriate law, the administrative law judge concludes that the employer has sustained its burden of proof in showing the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated August 13, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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