

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALICE M GREENWOOD**  
Claimant

**APPEAL NO: 15A-UI-06784-LDT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AREA RESIDENTIAL CARE INC**  
Employer

**OC: 05/17/15**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Area Residential Care, Inc. (employer) appealed a representative's June 4, 2015 decision (reference 01) that concluded Alice M. Greenwood (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 21, 2015. The claimant participated in the hearing. Sandy Collins appeared on the employer's behalf and presented testimony from one other witness, Mandy Downing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on May 29, 2013. She worked full time, most recently as a night monitor, in the employer's group home for persons with mental and physical disabilities. Her last day of work was the night of May 18 into the morning of May 19, 2015. The employer discharged her on May 21, 2015. The reason asserted for the discharge was her attendance.

The claimant had been given a verbal warning on January 7, 2015 for being 23 minutes late that day, as well as being 14 minutes late on December 31, 2014, and being late on two other occasions in September 2014. She was given a written warning on March 10, 2015 for an incident of tardiness in February 2015; another incident which the employer had believed to be a no-call, no-show for covering an additional partial shift on March 8 was dismissed because there was confirmation that the claimant had agreed to cover the shift.

On May 19 the employer brought the claimant in and advised her that she was going to be discharged because of four additional incidents of being late or missing partial shifts the employer believed she had agreed to cover between about May 1 through May 17. In the discussion the claimant demonstrated that for one of the extra shifts she had found another person for coverage, and that for one of the other extra shifts she had not agreed to cover the shift. Therefore, those two incidents were removed from the record, leaving a partial extra shift on May 8 from 9:00 a.m. to 10:30 a.m. that she forgot and did not report to work, and an extra shift on May 17, 2015 scheduled to start 8:00 a.m. for which she forgot and for which she was 30 minutes late after being called by the supervisor at 8:15 a.m.

The conclusion of the meeting on May 19 was that the claimant would not be discharged, but that she would be placed on probation for 30 days, during which she could work no overtime, since it was the overtime shifts for which she had been having attendance issues. The employer advised the claimant that she should come to the employer's office at 2:00 p.m. on May 21 to sign the papers for the probation.

On May 21 the claimant had a job interview for another employer at 1:00 p.m. which was supposed to go for a half hour. However, the interview ended up going for an hour and a half. At 2:00 p.m. the claimant stepped out of the interview to call the employer's office to advise the employer that she was running late. When the interview ended, the claimant went to the employer's office, but at that time the employer informed her that because she was late that day to go over the probation papers, the employer was proceeding to discharge her.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her attendance. Excessive unexcused absences can constitute misconduct, however, in order to establish the necessary element of intent, the final incident must have occurred despite the claimant's knowledge that the occurrence could result in the loss of her job. *Cosper*, supra; *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984). Here, the final incident that triggered the employer's ultimate decision to discharge the claimant was being late for the appointment to come into sign probation papers. This is not the same as being late for a scheduled shift, and the claimant did not reasonably expect that she faced discharge if she did not report promptly to sign the papers. Further, her delay was not unreasonable, and she had contacted the employer to advise them of her delay. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's June 4, 2015 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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