

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TASHA R DONTJE**  
Claimant

**APPEAL NO: 13A-UI-04076-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BARTELS LUTHERAN HOME INC**  
Employer

**OC: 03/03/13**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's March 29, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. Carol Brown, the human resource coordinator, Brenda Schadeke and Cindy Guyer appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The employer hired the claimant as a housekeeper on June 22, 2012. On October 5, 2012, the claimant started working as a full-time weekend CNA for the employer. The employer's absenteeism policy informs employees that after they have three absences, they will receive verbal warning. Employees receive a written warning for their fourth absence and are suspended when they have five absences in a rolling 12-month time frame. The employer terminates an employee at the sixth absence in a rolling 12-month time. The employer's attendance policy is a no-fault policy. Absences are only excused if they are covered under the Family Medical Leave Act.

The claimant called in on September 18, 27 and December 1, to report she was ill and unable to work. She received a verbal warning for these absences on December 6, 2012. The claimant received a written warning and was suspended for missing work on December 21 and 22, 2012. She was ill these days. When the claimant was suspended, the employer gave her a final warning that told her she could be discharged if she had any more attendance issues.

On February 27, 2013, the claimant called and told a co-worker she would not be at work that night. The employer did not know why the claimant was unable to work. On March 6, the claimant told the employer she went to her ex-husband's home to pick up some of her property

and he called the police. She was not arrested, but did not go to work as scheduled on February 27.

The employer discharged the claimant on March 6, 2013, for violating the employer's attendance policy – having six absences in a rolling 12-month time frame.

The claimant established a claim for benefits during the week of March 3, 2013. She has filed for and received benefits since March 3, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known her job was in jeopardy for attendance issues in late December 2012 after she received a suspension and final written warning. Since the claimant did not participate at the hearing and was not arrested, it is not known why she was unable to work on February 27, 2013. The claimant did not present evidence that she had reasonable grounds for her February 27 absence. Based on the evidence presented at the hearing, the claimant violated the employer's attendance policy and is not qualified to receive benefits as of March 3, 2013.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits she may have received since March 3, 2013, will be remanded to the Claims Section to determine.

**DECISION:**

The representative's March 29, 2013 determination (reference 01) is reversed. The employer discharged the claimant for work-connected misconduct – violating the employer's attendance policy. The claimant is disqualified from receiving unemployment insurance benefits as of March 3, 2013. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits she may have received since March 3, 2013, is **Remanded** to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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