

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUDREY J HERMAN
Claimant

APPEAL NO: 13A-UI-03802-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 02/24/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Audrey Herman (claimant) appealed a representative's March 19, 2013 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with The University of Iowa (employer) for repeated tardiness in reporting for work after having been warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 15, 2013. The claimant participated personally. The employer participated by Mary Eggenburg, Benefits Specialist, and Mary Jo Stevens, Human Resources Representative. The claimant offered and Exhibits A and B were received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 30, 2012, as a full-time clerk 3. She was told that she would work from 9:15 a.m. to 5:00 p.m. but she could flex her hours. The claimant signed for receipt of the employer's handbook on September 30, 2012. After starting work the claimant and her supervisor agreed the claimant would start work at 8:45 a.m.

At first the human resource representative talked to the claimant about arriving at work too early. Later she wanted the claimant to arrive at work at 8:30 a.m. The claimant stated that 8:30 a.m. would not work for her. She was hired to work at 9:15 a.m. and she agreed to start at 8:45 a.m., not 8:30 a.m. The employer issued the claimant warnings for tardiness for not arriving at 8:30 a.m. on October 15, November 12, 13, 2012, January 24, February 15, and 20, 2013. The employer notified the claimant that further infractions could result in termination from employment. On February 21, 2013, the claimant arrived at work at 8:45 a.m. and immediately went to talk to her supervisor before clocking in on the time clock. The employer said she was tardy for work and terminated the claimant on February 21, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The claimant worked the hours she agreed to work and the employer terminated the claimant for working those hours. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 19, 2013 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs