

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**RENEE GLADWELL
6900 SPRING CREEK COVE
RALEIGH NC 27613**

**WILSON CONCRETE COMPANY
1201 S 16TH ST
COUNCIL BLUFFS IA 51501**

**Appeal Number: 05A-UI-06227-ET
OC: 01-10-99 R: 01
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 10, 1999, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 7, 2005. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's appeal was due October 11, 1999. It was not filed until June 13, 2005. The claimant was beaten, raped, strangled and left to die by a co-worker. Shortly after that attack she was diagnosed with multiple sclerosis. The claimant has been unable to care for herself since her attack and must rely on others for assistance. Consequently, the administrative law judge concludes that due to factors beyond her control she was unable to appeal the October 1, 1999, reference 01, decision in a timely manner.

The claimant was employed as a full-time dispatcher for Wilson Concrete Company from April 18, 1994 to May 10, 1999. She was placed on lay-off status in December 1998. She returned to work May 10, 1999, but the employer did not have enough work for her to do and subsequently sent her home and stated they would contact her when it had work. The employer called her the following month and left a message asking that she return her keys and equipment. The claimant dropped the keys off after hours and did not hear from the employer again and therefore believed her employment was terminated due to a lack of work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was laid off due to a lack of work. The claimant continued to seek work from the employer but was repeatedly told the employer did not have enough work for her to do and the claimant concluded her employment was terminated due to a lack of work. Consequently, the administrative law judge concludes the claimant was discharged for no disqualifying reason and benefits are allowed.

DECISION:

The October 1, 1999, reference 01, decision is reversed. The claimant's appeal is timely. She was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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