

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENILEE E PETERSON**

Claimant

**APPEAL NO. 09A-UI-09883-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**

Employer

**OC: 05/31/09**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the representative's decision dated June 29, 2009, reference 01, which denied benefits based upon her separation from The University of Iowa. After due notice, a telephone hearing was scheduled for and held on November 17, 2009. The claimant participated personally. Participating on behalf of the claimant was Ms. Alison Warner Smith, Attorney at Law. The employer participated by Mary Eggenburg, Wendy Evans and Sheila Ouverson.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Jenilee Peterson was employed as a full-time patient account representative for The University of Iowa from April 14, 2008 until May 29, 2009 when she was discharged from employment.

The claimant was discharged from employment after she had logged into her employer's computer system at 8:07 a.m. on the morning of May 20, 2009. Under university policy, the claimant was expected to be at her work station by her beginning time of 8:00 a.m. that morning. Although the claimant had arrived at 8:00 a.m., she had some difficulty logging in, having to restart her computer to do so. Ms. Peterson had telephoned the employer prior to 8:00 a.m. to indicate that she was running a little bit late in reporting to work due to unexpected traffic congestion. The claimant had most recently been warned about her punctuality on August 5, 2008. The claimant had received additional warnings for other issues on November 3, 2008 and November 24, 2008 and had been suspended for three days on February 2, 2009 when she was away from her work station for approximately two hours after being unexpectedly notified of a death in the family.

Ms. Peterson had at times reported to work after the scheduled working time since her final warning for tardiness in August 2008 because of morning sickness associated with pregnancy, unexpected traffic delays and on one occasion because she was required to return home for an item necessary in her birthing classes.

On May 21, the claimant submitted a letter to The University of Iowa requesting accommodations in her employment for health reasons related to her pregnancy and a meeting was held on May 26 to further process the claimant's paperwork with respect to Family Medical Leave Act and her request for accommodations under the Americans with Disabilities Act. The employer was aware that Ms. Peterson was experiencing difficulties with her pregnancy and a number of her punctuality issues were related to the claimant's morning sickness. On May 29, 2009, the claimant was discharged from employment because she had not logged in promptly by 8:00 a.m. on May 20, 2009.

Ms. Peterson did not believe that her employment was in jeopardy due to issues with punctuality as she had received no further warnings from The University of Iowa regarding punctuality since August 2008 and the claimant believed that the employer was aware that a number of her punctuality issues were due to her medical condition. The claimant also believed that under the university's progressive disciplinary policy a five-day suspension from work was required before discharge. At the time of the claimant's discharge, her physician was in the process of determining the claimant was not able to work due to her pregnant condition.

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

For the reasons that follow, the administrative law judge concludes based upon the evidence in the record that the claimant was discharged for no disqualifying reason.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate intentional, culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

The Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984), held that excessive unexcused absenteeism is one form of misconduct. The court held that it must be both excessive and unexcused. This concept includes tardiness, leaving early, etc. Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer.

In the case at hand, the evidence in the record establishes that Ms. Peterson had most recently been warned for tardiness in August 2008. Although the claimant had been late in reporting to work on a number of occasions since that day, she had received no further warnings from the employer. Although the claimant had been warned for other matters, her discharge on May 29, 2009 was related to the claimant logging in seven minutes past 8:00 a.m. on May 20, 2009. The claimant testified under oath that she was at her work station at 8:00 a.m. but had difficulty logging in due to computer issues that morning.

In addition, the administrative law judge notes that the employer was aware that a number of the claimant's punctuality issues were related to morning sickness because she was pregnant. The employer was aware that Ms. Peterson had requested accommodations and was completing application for limited working time under the provisions of the Family Medical Leave Act as well as the Americans with Disabilities Act because of her medical condition.

The question before the administrative law judge is not whether the employer has a right to discharge Ms. Peterson for her most recent attendance violation but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the administrative law judge concludes based upon the evidence in the record that the claimant's final attendance violation was not due to a deliberate, intentional or culpable act by the claimant but due to factors beyond her control. The claimant found herself in traffic congestion and followed a reasonable course of action by calling in to report that she may be a few minutes late. Although the claimant arrived at her work station at 8:00 a.m., she was delayed in logging in for several minutes due to factors beyond her control. Evidence sufficient to warrant the denial of unemployment insurance benefits has not been established. Benefits are allowed.

**DECISION:**

The representative's decision dated June 29, 2009, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant 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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