

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**LINDSAY M MCCANNON**  
Claimant

**APPEAL NO. 14A-UI-11597-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST PROFESSIONAL STAFFING LLC**  
Employer

**OC: 10/05/14**  
**Claimant: Respondent (1)**

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Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated October 30, 2014, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 1, 2014. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Melissa Gray participated in the hearing on behalf of the employer with a witness, Cyndi Mahlstadt. Exhibits One through Three were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked on an assignment as a customer service representative at Athene Insurance from November 5, 2013 to October 6, 2014.

On October 13, 2014 a supervisor at Athene Insurance informed the employer that it wanted the claimant removed from her assignment at Athene Insurance because of negative attitude and absences. She was absent 24 hours in January, 31 hours in February, 12 hours in March, 24 hours in April, 24 hours in May, 70 hours in June, 10 hours in July, 18 hours in August, and 25 hours in September. The employer has no information about why the claimant was absent or whether the client business was notified about the absences because claimant did not call the employer as required by the assignment contract. The employer has no information about the final instance of absence or negative attitude. The claimant was not counseled or warned about her attendance.

The claimant was removed for the assignment, but was considered to be still employed by the employer and eligible for reassignment to another client business.

## REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a. Since the claimant was not considered discharged by the employer and did not voluntarily quit her employment there is no basis for disqualification under sections 96.5-1 and 96.5-2-a.

In the alternative, if the removal from an assignment is deemed a discharge, the evidence fails to establish any current act of work-connected misconduct that would disqualify the claimant from receiving benefits.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The unemployment insurance rules provide: "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 act or acts. The termination of employment must be based on a current act." 871 IAC 24.32(8).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unable to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The reason for the removal from the assignment was negative attitude and attendance. But all the employer has for evidence is an allegation that the claimant displayed a negative attitude to other employees who were hired by Althene without any details as to what and when it happened. The evidence that she missed a certain number of hours each month does not prove the absences were unexcused. While the employer may have been justified in removing the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established.

As mentioned in the hearing, if the employer believes the claimant is subject to disqualification for failing to accept suitable work under Iowa Code § 96.5-3, a report with information about whether a bona fide offer was made needs to be given to the Agency for investigation and to make a determination; because that was not an issue noted for the hearing.

**DECISION:**

The unemployment insurance decision dated October 30, 2014, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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