

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA S RODRIGUEZ
Claimant

APPEAL NO: 12A-UI-13569-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEHAVIORAL TECHNOLOGIES CORP
Employer

**OC: 10/14/12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Amanda S. Rodriguez (claimant) appealed a representative's November 2, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Behavioral Technologies Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 13, 2012. The claimant participated in the hearing. Melissa Smith appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 30, 2006. She worked full time, for the last two years as a supervisor. Her last day of work was September 29, 2012. The employer discharged her on October 1, 2012. The reason asserted for the discharge was excessive absenteeism.

The employer's attendance policy defines "excessive" absenteeism as nine or more occurrences, at which point the employee is subject to discharge. In 2012, through August 13 the claimant had reached 9.5 occurrences, for which she was given a final warning on September 12. The prior occurrences included about six occurrences of being late due to child care or transportation issues and about eight occurrences of being absent due to a sick child.

The final occurrence was on September 30; the claimant had switched shifts with another employee and was scheduled to work a 9:00 a.m. to 3:30 p.m. shift. She did not call or report for work for the scheduled start time of the shift, but called after 11:00 a.m. to report that she had overslept. She was then directed not to report for the remainder of the shift. The employer then determined that since the claimant had this further occurrence after her final warning, she would be discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive unexcused absenteeism, including tardiness, can constitute misconduct. 871 IAC 24.32(7). Absences due to issues that are of purely personal responsibility, specifically including issues of child care, sick children, and transportation, are not excusable. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984); *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984). Further, for a tardy due to oversleeping, the presumption is that oversleeping is within an employee's control and is not excusable. *Higgins*, supra. The claimant's final occurrence was not excused and was not due to illness or other reasonable grounds. The claimant did have prior excessive unexcused occurrences and had previously been warned that future occurrences could result in termination. *Higgins*, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's November 2, 2012 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of October 1, 2012. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs