

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICOLE V CARTER**  
Claimant

**APPEAL NO. 12A-UI-14031-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACKERMAN INVESTMENT CO**  
Employer

**OC: 10/28/12**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from the November 26, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on December 26, 2012. Claimant participated with her aunt Mica King. Employer participated through Quality Inn Hotel Manager Molly Hiscox and Housekeeping Supervisor Shelly Madewell.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a housekeeper and was separated from employment on October 17, 2012 for alleged tardiness for her 8:00 a.m. shift. Her daycare Oakridge Early Enrichment Program does not open until 8:00 a.m. Madewell was aware of that situation and did not tell claimant it was an issue. Her weekday shifts started at 8:00 a.m. and the weekend shifts started at 9:00 a.m. She was never a no-call/no-show and her tardiness was all related to the known daycare hours or because of scheduling her to work on days the employer knew she had no daycare available until 11:00 a.m. The employer did not give her copies of any written warnings and presented multiple warnings covering multiple issues and incident dates on one or two days for her signature. Claimant was aware that she may have fewer scheduled hours if she could not work Saturdays but she was never told to switch daycares in order to report to work on time or that she must work Saturdays to remain employed. The employer did not provide proposed exhibits for the hearing.

**REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code § 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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. A failure to report to work because of a lack of childcare is generally considered an unexcused absence. However, since the employer was aware that claimant's daycare did not open until 8:00 a.m. on weekdays and 11:00 a.m. on weekends and did not tell her this arrangement was unacceptable or issue her credible warnings, the employer has not established a final or current incident of unexcused absenteeism that establishes work-connected misconduct and no disqualification is imposed. Benefits are allowed.

**DECISION:**

The November 26, 2012 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/css