

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNETTE S LEWIS

Claimant

APPEAL NO: 12A-UI-14842-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA

Employer

OC: 11/04/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Annette S. Lewis (claimant) appealed a representative's December 12, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from APAC Customer Services of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 28, 2013. The claimant participated in the hearing and presented testimony from one other witness, Audrey Brooks. Turkessa Newsome appeared on the employer's behalf and presented testimony from two other witnesses, Melissa Villalpondo and Jessica Vance. 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 4, 2012. She worked full time as a customer service representative at the employer's Davenport, Iowa call center. Her last day of work was November 7, 2012. The employer discharged her on that date. The reason asserted for the discharge was violation of the employer's attendance policy.

The employer's attendance policy provided for termination if an employee reached 5.5 occurrences. The claimant had been given a first and final warning for attendance on September 19, at which point she was actually at 9.5 occurrences. Some of the claimant's occurrences were due to court appearances and appointments with her attorney, and at least one-half occurrence from going home ill, but she also had numerous occurrences for tardiness. Due to continued occurrences she was given a verbal reinforced final warning on October 31, 2012.

The final incident was that the claimant was tardy on November 7. The claimant's start time was 7:00 a.m. She overslept, awakening at about 6:35 a.m. She entered the building at

7:01 a.m., and did not log into the system until 7:10 a.m., five minutes beyond the employer's five-minute grace period. As a result of this final occurrence after her prior warnings, the employer discharged the claimant.

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 and unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). Tardies are treated as absences for purposes of unemployment insurance law. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). The presumption is that oversleeping is generally within an employee's control. *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 the claimant had previously been warned that future absences could result in termination. *Higgins*, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's December 12, 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 November 7, 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

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