

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA L ROSENBAUM**  
Claimant

**APPEAL NO. 14A-UI-09660-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERICOLD LOGISTICS LLC**  
Employer

**OC: 08/17/14**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Americold Logistics LLC filed a timely appeal from a representative's decision dated September 5, 2014 (reference 01) which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 8, 2014. Claimant participated. The employer participated by Ms. Emily Yount, Human Resource Assistant. Employer's Exhibits A, B, C, D, E, and F were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Jessica Rosenbaum was employed by Americold Logistics LLC from June 4, 2012 until August 18, 2014 when she was discharged from employment. Ms. Rosenbaum was employed as a full-time forklift operator and was paid by the hour.

Ms. Rosenbaum was discharged when she exceeded the permissible number of attendance infraction points allowed under the company's "no-fault" attendance policy. Under the terms of the policy, an employee is subject to discharge if they accumulate four attendance infraction points within an eight-month rolling period. Employees are assessed one infraction point for a full day's absence and a half point for late arrivals or leaving early. Ms. Rosenbaum was aware of the policy and had been warned about her attendance.

Ms. Rosenbaum had called off work ill on December 17, 2013 and December 20, 2013, and had left early on May 8, 2014 due to illness. The final infraction that caused the claimant's discharge took place on August 15, 2014 when Ms. Rosenbaum arrived to work approximately one hour late because she did not note that she had been scheduled for a mandatory early start for that date. Because the final infraction had caused the claimant to accumulate four infraction points within the eight-month rolling period, Ms. Rosenbaum was discharged from employment.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(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.

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

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. The employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

The record in this matter establishes the claimant's absences had been minimal, previous absences had been due to illness and had properly been reported. Because these absences were due to illness and were properly reported, they are excused for the purposes of the Employment Security Law. The Iowa Supreme Court in the case of Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989) held that a single, unexcused absence does not constitute misconduct, even in the case in which the employee was specifically instructed to notify the employer if he/she would be absent but did not do so. The claimant's single, unexcused absence, without a prior history of other unexcused absences, is not disqualifying, as it does not meet the excessive standard of the law.

While the decision to discharge the claimant may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the claimant's discharge took place under non-disqualifying conditions. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated September 5, 2014 (reference 01) is affirmed. Claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided 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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