

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY A ANDERSON
Claimant

APPEAL NO. 06A-UI-10866-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SOUTHERN IOWA RESOURCES FOR
FAMILIES INC**
Employer

**OC: 10/8/06 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 2, 2006, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on November 28, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Sarah Wenke. Sharon McNeil participated in the hearing on behalf of the employer with a witness, Deann Leach.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a house manager from August 17, 2004, to October 10, 2006. The employer provides services to disabled clients. On September 15, 2006, the claimant was counseled for tardiness and suspended for three days for stopping at her personal residence with a client. She had been 20 minutes late for work on September 2 when her babysitter failed to arrive on time for her to get to work. She called to notify the employer that she was going to be late. She was placed on probation and told that her employment could be terminated for further violations.

On October 3, 2006, the claimant was scheduled to work at 3:00 p.m. She was having intermittent problems with her vehicle not starting for about a week and decided to take the car to the dealership to have the problem repaired. She took her vehicle in at 11:00 a.m. and came back at about 1:45 p.m. to pick the vehicle up but the vehicle was not finished until later that afternoon. She immediately called when the car was finished and she was driving to the job site to let the employer know what had happened and that she would be late for work. She arrived at work about 15 minutes late.

When the claimant returned from vacation on October 10, the employer discharged the claimant for reporting late for work on October 3 and due to her prior discipline.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful or substantial misconduct has been proven in this case. The claimant had a legitimate reason for being late for work on October 3 and called in to report that she would be late.

DECISION:

The unemployment insurance decision dated November 2, 2006, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs