

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**BARBARA A DISCHER  
2253 GRAND AVE #8  
WEST DES MOINES IA 50265**

**LUTHERAN SERVICES IN IOWA INC  
ATTN HUMAN RESOURCES  
3116 UNIVERSITY AVE  
DES MOINES IA 50311**

**Appeal Number: 04A-UI-10778-S2T  
OC: 11/30/03 R: 02  
Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Barbara Discher (claimant) appealed a representative's September 28, 2004 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Lutheran Services in Iowa (employer) for excessive unexcused absences after being warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 27, 2004. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 5, 2004, as a full-time employee relations/compensation specialist. The employer gave employees paid time off to be used for any type of absence. The employee had to report the absence prior to the start of the shift.

The claimant was absent from work due to illness and taking care of her parents. On July 22, 2004, the employer talked to the claimant about her absences. Even though the claimant had enough paid time off to cover her absences, the employer told the claimant not to be absent from work. On August 16, 2004, the claimant properly reported her absence from work. On August 17, 2004, the claimant reported to the employer she would be at work by noon. The claimant fell asleep. When she awoke at 3:00 p.m. she contacted the employer and apologized. The claimant had enough paid time off to cover her absences on August 16 and 17, 2004. On August 18, 2004, the employer terminated the claimant for failing to properly report her absence on August 17, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was not.

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).

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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to properly report an absence. The claimant disregarded the employer's right by failing to properly report her absence on August 17, 2004. The claimant's disregard of the employer's interests is not misconduct because it was a single incident. The claimant's solitary incidence of failure to follow the employer's instructions does not rise to the level of misconduct. The employer has not met its burden of proof to establish job-related misconduct. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's September 28, 2004 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

bas/tjc