

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER M BOWDRE
Claimant

APPEAL NO. 12A-UI-11435-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

OC: 08/26/12
Claimant: Appellant (1)

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant, Heather Bowdre, filed an appeal from a decision dated September 19, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on November 13, 2012. The claimant participated on her own behalf and with Lesa Daniels. The employer, Hon, participated by Supervisor Scott Ernst, MCR Representative Stephanie Reimers and was represented by Employers Edge in the person of Deniece Norman.

ISSUE:

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

FINDINGS OF FACT:

Heather Bowdre was employed by Hon from July 18, 2005 until August 22, 2012 as a full-time cell operator working 5:00 a.m. until 3:00 p.m. The employer maintains an attendance policy of giving each employee nine points at each anniversary date. Employees who use all nine points before the next anniversary date are subject to discharge for excessive absenteeism. To properly report an absence the employee must call before the start of the shift and speak with their manager.

Ms. Bowdre had checked with her supervisor, Scott Ernest, in June and was told she had only two points left. She used 1.5 points after that and as of August 29, 2012, had only one-half point left. The morning of August 28, 2012, she overslept until 6:00 a.m. She immediately called Mr. Ernest even though it was one hour after the start of the shift. He told her not to bother to come in as she had used all of her points.

REASONING AND CONCLUSIONS OF 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.

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 claimant had been advised her job was in jeopardy as a result of her absenteeism. The final occurrence was a late call due to oversleeping. Matters of purely personal consideration, such as oversleeping, are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). The claimant was discharged for excessive absenteeism. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

DECISION:

The representative's decision of September 19, 2012, reference 01, is affirmed. Heather Bowdre is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs