

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELISA E AMADOR**  
Claimant

**APPEAL NO: 15A-UI-02207-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY HEALTH SERVICES – IOWA CORP**  
Employer

**OC: 02/01/15**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Elisa E. Amador (claimant) appealed a representative's February 17, 2015 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Mercy Health Services – Iowa Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 11, 2015. This appeal was consolidated for hearing with one related appeal, 15A-UI-03148-DT. The claimant participated in the hearing. Beckie Wahlberg appeared on the employer's behalf and presented testimony from one other witness, Abby Sahrenholz. Anna Pottebaum served as interpreter. 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 September 13, 2010. She worked part time (20 hours per week) as a certified nursing aide (CNA). Since at least March 2014 her shift started at 5:00 a.m. Her last day of work was January 25, 2015. The employer discharged her on January 29, 2015. The reason asserted for the discharge was excessive tardiness.

The employer's policies provide for termination for a part-time employee who has more than six occurrences within a 12-month period. In the 12-month period prior to January 24, 2015 the claimant had nine occurrences of tardiness. At least a number of them were described as being due to oversleeping. She had been given a final warning on October 28, 2014.

On January 24 the claimant reported to work at 7:52 a.m. She indicated that she had overslept due to medications. She asserted that she had been prescribed a number of medications for mental health issues that made her oversleep, and that a number of the prior nine tardies were also due to oversleeping due to the medications. However, there had not been any recent changes in her medication, nor had the claimant sought advice from her doctor as to

modifications to her medications to address the problem of oversleeping. Even though she had previously been warned that her tardies were placing her job in jeopardy and she knew that the medications could make her oversleep and be tardy, she had not taken any other remedial steps such as setting multiple alarms.

Due to the claimant's additional tardy on January 24, 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. Rule 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. Rule 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive unexcused absenteeism can constitute misconduct. Rule 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. While an unexpected incident of oversleeping such as might occur from a new medication might be considered to have been outside the employee's control, here the claimant did have some control over further events of oversleeping, and could have taken remedial action against the known possibility that she might otherwise oversleep and be tardy. As a result, the claimant's final tardy was not excused and was not due to properly reported illness or other reasonable grounds. The claimant had previously been warned that future tardies could result in termination. *Higgins*, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's February 17, 2015 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of January 25, 2015. 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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