

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**TERESA M BUSH**  
Claimant

**APAC CUSTOMER SERVICES INC**  
Employer

**APPEAL NO. 14A-UI-11534-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/05/14  
Claimant: Respondent (1)**

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Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated October 23, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 1, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Turkessa Newsome participated in the hearing on behalf of the employer with a witness, Lisa Kubot.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as a customer service representative for the employer from December 23, 2013, to October 4, 2014. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled. The claimant had received warnings regarding absenteeism and tardiness.

The claimant was absent from work due to legitimate illness starting on September 25. She properly reported her absences each day she missed. She was released to return to work on October 4. She arrived at the building at about 7:20 a.m. for a 7:30 a.m. shift but had problems punching in on the computer and ended up punching in a few minutes after her scheduled start time. When she informed her supervisor about her late punch in, the supervisor told the claimant that she could work the rest of the day and call in on Monday to find out what the employer had decided regarding her attendance issues. When the claimant contacted the employer on October 6, she was informed that she was terminated due to attendance. She did not quit her employment. The claimant turned in her headset on October 8.

**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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly that she was informed that she was discharged and did not quit. The evidence from Sandy Johnson was secondhand information since Johnson was not at the hearing to testify. The claimant's testimony is entitled to greater weight.

The unemployment insurance rules provide: "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." 871 IAC 24.32(7).

The preponderance of the evidence establishes the claimant as discharged for attendance. But her final absences were due to legitimate illness properly reported. The final incident of tardiness was not due to any fault by the claimant but was a technical issue with logging in her time.

**DECISION:**

The unemployment insurance decision dated October 23, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs