

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRISHA L DELONG**  
Claimant

**APPEAL NO. 09A-UI-08599-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DAC INC**  
Employer

**OC: 05/03/09**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

DAC, Inc. filed an appeal from a representative's decision dated June 8, 2009, reference 01, which held that no disqualification would be imposed regarding Trisha DeLong's separation from employment. After due notice was issued, a hearing was held by telephone on July 16, 2009. Ms. DeLong participated personally. The employer participated by Tina Miller, Human Resources Director, and Eric Pape, Coordinator. Exhibits One through Eight were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. DeLong was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. DeLong was employed by DAC, Inc. from June 3, 2004 until May 6, 2009. She was employed full time as a supported living specialist. She was discharged because of her attendance. She received warnings and suspensions regarding her attendance. She was also notified during her June 3, 2008 evaluation that her attendance was unacceptable. She provided medical excuses for some of her absences.

The decision to discharge Ms. DeLong was due to the fact that she was late for a mandatory meeting on May 4, 2009. She had at least two week's notice that the meeting was scheduled for 3:00 p.m. She thought the meeting was at 3:30 p.m. and, therefore, did not report until 3:10 p.m. May 4 was the only occasion on which she had been late to work. As a result of her attendance history, Ms. DeLong was discharged on May 6, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321

N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

DAC, Inc. has a "no-fault" attendance program and does not maintain records as to the reasons an individual may give for missing work. Without knowing why an individual was absent, the administrative law judge cannot determine if the grounds were reasonable. Therefore, the administrative law judge cannot conclude that the absences were unexcused. A disqualification from job insurance benefits can only be based on unexcused absences. The evidence of record failed to establish that any of Ms. DeLong's absences prior to May 4, 2009 were unexcused absences within the meaning of the law.

The decision to discharge Ms. DeLong was prompted by the fact that she was late for a mandatory training meeting on May 4. She was late because she misread the schedule. Since she was responsible for correctly reading her schedule, the tardiness is unexcused. The employer did not dispute Ms. DeLong's testimony that this was the only occasion on which she had been late reporting to work. Given the duration of her employment, the administrative law judge concludes that the one occasion of tardiness is not sufficient to establish excessive unexcused absenteeism. Nor does it establish a substantial disregard for the employer's interests or standards.

It was well within the employer's prerogative to discharge Ms. DeLong in light of its attendance policy. However, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. For the reasons cited herein, benefits are allowed.

**DECISION:**

The representative's decision dated June 8, 2009, reference 01, is hereby affirmed. Ms. DeLong was discharged by DAC, Inc. but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs