

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEIDIE GRAY**  
Claimant

**APPEAL NO: 14A-UI-12278-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TMONE LLC**  
Employer

**OC: 11/02/14**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 20, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 17, 2014. The claimant participated in the hearing. Lindsey Sinn, Employee Connections Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time telephone account manager for TM One from December 10, 2012 to October 22, 2014. She was discharged for attendance issues.

The employer moved to a different location in July 2014. The previous location was on the bus line and the claimant relied on the bus for transportation to and from work. After the move, the employer's premises were not near a bus line and following that time the claimant had transportation issues.

Under the employer's attendance policy, points are assessed any week the employee does not work 40 hours. One-quarter point drops off for each week the employee works 40 hours. Every time an employee receives a point, she receives a disciplinary action. Termination usually occurs when an employee accumulates five points. The employer could not detail the dates of the claimant's absences.

Between July 1 and October 22, 2014, the claimant did not work a full week the week of July 6; July 13; July 20; August 3; August 10; August 24; September 7; September 14; and October 12, 2014. She worked 40 hours and had one-quarter point deducted the week of July 27; August 17; August 31; September 21; September 28; and October 5, 2014.

She had five and one-half points the week of September 7, 2014, and she had six and one-half points the week ending September 14; 2014, and the employer chose to give her a second chance on each of those occasions. When the claimant did not work 40 hours the week of October 12, 2014, the employer terminated her employment October 22, 2014.

The claimant received a verbal warning for attendance March 4, 2013, and a written warning for attendance and a no-call/no-show May 5, 2014.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful

wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant did violate the employer's attendance policy, the absences the employer listed between July 1, 2014 and October 22, 2014, were attributable to the claimant's transportation problems. The claimant began her employment with this employer in December 2012. She received two warnings about her attendance prior to July 1, 2014. Her job was not in jeopardy due to her attendance until the employer moved to a new location, well off the bus line, leaving the claimant without a consistent form of transportation. The claimant took the bus prior to the move and did not face transportation issues.

The claimant did not lose her means of transportation through any action on her part but rather because the employer moved. The circumstances that resulted in her loss of transportation were not the fault of the claimant. The job the claimant accepted was one for which she had transportation to work as it was on the bus line. The job changed when the employer moved and the claimant suffered transportation, and resulting attendance, issues after that point in time. Under these circumstances, the administrative law judge must conclude the claimant's attendance problems were not intentional misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The November 20, 2014, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css