

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE M STEVENS
Claimant

APPEAL NO. 12A-UI-00276-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

**OC: 11/27/11
Claimant: Appellant (5)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated December 28, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 6, 2012. The employer participated by Deb Perdue, branch manager Mt. Pleasant office. The claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Deb Perdue.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a staffing agency. The claimant was a temp to hire for West Liberty Foods, beginning on October 7, 2011. West Liberty Foods ended her assignment on November 9, 2011. The reason her assignment ended was violation of West Liberty Foods' attendance policy. The claimant requested another assignment on November 14, 2011.

All individuals who were assigned to work at West Liberty Foods were required to follow West Liberty Foods' attendance policy. If an individual accumulated three attendance points within ninety days, termination resulted. The claimant was aware of this policy. The claimant was absent from work on October 12, 2011; October 21, 2011; and she left early on October 27, 2011. This last absence was for personal illness. She then called in on November 14, 2011. She was at 3 ½ points and pointed out with her absence on November 14, 2011.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such as transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant had four absences between her date of hire on October 7, 2011, and her termination on November 9, 2011. Only one of these absences, which was due to personal illness, is considered excused. The claimant's other absences were due to child care issues. Childcare is a personal responsibility and therefore absences associated with childcare are considered unexcused. Three absences in approximately one month is excessive unexcused absenteeism. This is misconduct. Benefits are denied.

DECISION:

The decision of the representative dated December 28, 2011, reference 01, is modified without effect. The claimant is disqualified on the basis of misconduct. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs