

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LATISHA G WILLIAMS-ROJAS
Claimant

APPEAL NO. 08A-UI-03943-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRIMM BROTHERS PLASTICS CORP
Employer

**OC: 01/28/07 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 18, 2008, reference 06, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 7, 2008. Claimant participated personally and was represented by Toby Gordon, Attorney at Law. Employer participated by Nick Zaugg, Manufacturing Manager and Linda Wilson, Human Resource Manager. Exhibit One was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 24, 2008.

Claimant was discharged on January 24, 2008 by employer because claimant failed to come to work on January 24, 2008. Claimant was required by policy to call in prior to the start of shift. Claimant called 39 minutes late. Claimant was late calling in and coming to work due to lack of childcare.

Claimant was also absent on January 9, 2008 and had called in because she had an appointment with her attorney.

Claimant was also absent on December 12, 2007 and called in because she did not have childcare.

Claimant was also absent on November 21, 2007 and called in because she did not have childcare.

Claimant was given a prior warning for absenteeism January 23, 2008 warning her that one more absence would result in discharge.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning absenteeism. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant violated a known company rule after being warned that discharge would result. Absenteeism due to lack of childcare is not excusable. Absenteeism for an appointment with a lawyer, not an emergency, is not excusable. Here claimant repeatedly failed to report for work for reasons that are not excusable. Claimant accumulated three or more unexcused absences in a year. This is chronic unexcused absenteeism which qualifies as misconduct. The administrative law judge

holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated April 18, 2008, reference 06, is affirmed. 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.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css