

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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AG PROCESSING INC A COOPERATIVE
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Appeal Number: 06A-UI-02879-SWT
OC: 01/29/06 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 22, 2006, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on March 30, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Jessica Meyer participated in the hearing on behalf of the employer with a witness, Ernie Kiley. Exhibits One through were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time as a lab tech for the employer from December 1, 1997, to January 27, 2005. The claimant had been warned regarding the excessive tardiness on December 10 and 18, 2004. On February 18, 2005, the claimant was 56 minutes late and was

suspended for three days, which was considered a final warning. She was counseled about her attendance on November 17, 2005, after she was absent due to inclement weather.

On January 29, 2006, the claimant was arrested while driving home from a second job. The claimant knew that she did not have a valid driver's license due to past traffic offenses but drove anyway. She was jailed and her car was impounded.

The claimant called the employer before the start of her shift and stated that she would not be at work on January 30 due to her legal problems. After she was released from jail, she and her brother decided that it would be prudent to buy a different car so she would be less conspicuous to law enforcement. On her way home after buying a car in Des Moines, the claimant was again arrested and jailed for driving while barred and her car was impounded. The claimant's brother called her supervisor on the evening of January 30 and indicated that the claimant might not be at work the next day.

The claimant was absent from work on January 31. She called her supervisor about five and a half hours after her shift was to start. She explained what had happened to her supervisor and said she did not know when she would get to work until she got a work permit. The claimant was then suspended.

On February 2, 2006, the employer discharged the claimant for excessive unexcused absenteeism.

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.

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, (7) provide:

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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(7) Excessive unexcused absenteeism. 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.

The claimant's excessive unexcused absenteeism was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The claimant knowingly drove without a valid driver's license and could reasonably foresee that she would get picked up at some point, jeopardizing her attendance. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated February 22, 2006, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

saw/tjc