

**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**

**BARBARA L DAVIS  
1114 W SHERIDAN  
SHENANDOAH IA 51601**

**EATON CORPORATION  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166 0283**

**Appeal Number: 04A-UI-11196-DWT  
OC: 09/19/04 R: 01  
Claimant: Appellant (2)**

**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, 4<sup>th</sup> 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 are 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Barbara L. Davis (claimant) appealed a representative's October 4, 2004 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Eaton Corporation (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 12, 2004. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's witness/representative could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in January 1999. The claimant worked as a full-time forklift driver. The claimant understands when an employee was scheduled to work during a weekend, the employer allowed the employee to find a replacement to work in place of the employee without any negative consequences.

The claimant was scheduled to work on Sunday, August 22. The claimant did not work on August 22 because she found another employee to work her 7:00 a.m. to 7:00 p.m. shift. The employer gave the claimant a written warning for failing to report to work on August 22. When the claimant tried to explain how another employee worked for her on August 22, the employer gave the claimant another written warning for arguing with the employer.

The claimant was scheduled to work on August 28 from 7:00 a.m. to 3:20 p.m. The claimant worked as scheduled on August 28.

On September 2, the employer discharged the claimant for again failing to work as scheduled on August 28, 2004. Prior to September 2, the claimant had no idea her job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer may have had compelling business reasons for discharging the claimant. Without any testimony from the employer, the facts do not establish that the claimant did not

work as scheduled on August 28, 2004. The evidence does not indicate the claimant had excessive unexcused absenteeism or that she intentionally disregarded the employer's interests. Therefore, as of September 19, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 4, 2004 decision (reference 02) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of September 19, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs