

**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**

**JUDITH E LAMAR
1213 - 22ND ST
DES MOINES IA 50311**

**DSI DISTRIBUTING INC
11338 AURORA AVE
URBANDALE IA 50322-7907**

**Appeal Number: 05A-UI-12132-SWT
OC: 10/30/05 R: 02
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 November 29, 2005, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on December 15, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Kevin Rhoads participated in the hearing on behalf of the employer with a witness, Stacy Ayers.

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer service representative from November 10, 2003 to October 28, 2005. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. The claimant received a written warning for excessive absenteeism on August 4, 2004, and March 18, 2005.

She was suspended for three days due to excessive absenteeism on April 20, 2005, after she was late and absent from work several times after her previous warning. On August 24, the claimant received a written warning for attendance problems.

The claimant was granted a change in her start time from 7:30 a.m. to 7:00 a.m., but on the first day of the new schedule on October 3, she reported to work 27 minutes late because she overslept. She was absent from work on October 4, 2005, with notice to the employer but for unknown reasons. On October 6, 2005, the claimant was sent home because she was not in compliance with the dress code. As a result, the claimant received a final warning that if she was absent or late within the next 60 days, she would be terminated.

The claimant had a split lip, which required stitches, on October 31, 2005. She called in before the start of her shift and left a message on voicemail for her supervisor that she was not coming because of the problem with her mouth. Her supervisor called the claimant at about 7:10 a.m. and left a message for her to call in so they could talk. She called the claimant again at about 9:23 p.m. and left a message to have her call. Her supervisor wanted to let the claimant know that there was work she could do outside of answering phones. The claimant's supervisor called the claimant at 12:55 p.m. and informed her that her employment was terminated for violating the terms of the final warning.

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. She was given several chances to improve her attendance, but she continued to report late. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated November 29, 2005, 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/kjf