

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ARIELLE N WILSON**  
Claimant

**APPEAL NO. 14A-UI-03444-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DAVENPORT – ASSUMPTION**  
Employer

**OC: 03/02/14  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated March 20, 2013, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on April 22, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with witnesses, Lauren Hovey and Maggie Sitzgibbon. Paul Janke participated in the hearing on behalf of the employer with a witness, Jessica Billings. Exhibit One was admitted into evidence.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as a childcare aide for the employer from November 12, 2012, to February 20, 2014. Jessica Billings, the childcare director, was the claimant's supervisor. She was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled. Billings allowed employees, including the claimant, to send text messages to her to notify her of absences or when employees switched shifts.

On January 22, 2014, the claimant was scheduled to work from 7:15 a.m. to 4:45 p.m. The claimant overslept. When she got ready to leave, her car would not start. She texted Billings at 7:56 a.m. to let her know that she would be late because she had just woke up and her car would not start. Billings replied that the claimant should let her know when she got a ride. A short time later, the claimant responded that her mother was coming to pick her up. The claimant reported to work at 9:15 a.m. Billings did not discipline the claimant or say anything to her about her using a text message to inform her about her reporting late for work.

The claimant was scheduled to work from 7:15 a.m. to 4:45 p.m. on February 24, 2014. She discovered that she had an appointment that morning. On February 23, she contacted an employee, Lauren Hovey, who was scheduled off work on February 24 to switch shifts with her and work for her on February 24. At about 10 p.m., the claimant sent Billings a text message stating that she and Hovey had traded shifts. For some reason, Billings did not receive the text.

On February 24, Hovey forgot to set her alarm, overslept, and did not report to work. When the claimant did not arrive at work, Billings called Hovey to see if she could work since it was her day off. When Hovey returned Billings' call, she admitted to Billings that she had agreed to cover the claimant's shift that day but had overslept.

Billings discharged the claimant on February 24, 2014, because she considered the claimant a no-call, no-show.

### **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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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 substantial and 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that texting Billings was an acceptable way to notify her about absences and switching shifts. I also believe the claimant that she had never been disciplined or counseled about her attendance.

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. The claimant followed the accepted protocol for notifying Billings about switching shifts.

**DECISION:**

The unemployment insurance decision dated March 20, 2013, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs