

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YELEY DAHN
Claimant

APPEAL NO: 14A-UI-07217-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PROGRESS INDUSTRIES
Employer

OC: 06/15/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Yeley Dahn (claimant) appealed a representative's July 3, 2014 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Progress Industries (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 6, 2014. The claimant participated in the hearing. Shelly Nesheim appeared on the employer's behalf. During the hearing, Employer's Exhibits One through Five were entered into evidence. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 4, 2013. She worked full time as a residential instructor in the employer's group home for persons with disabilities. Her last day of work was June 18, 2014. The employer discharged her on that date. The reason asserted for the discharge was excessive tardiness.

The claimant had various work performance and attendance issues in her employment. She had been given multiple warnings, including a last chance agreement on May 12, 2014 and a last chance agreement addendum on June 17, 2014. Both agreements addressed the claimant's problems with punctuality and indicated that additional occurrences could result in discharge.

On June 18 the claimant was scheduled for a shift to begin at 8:00 a.m. The overnight aide at the home called her supervisor at 8:00 a.m. to report that the claimant had not arrived. The claimant then clocked in at 8:07 a.m. and told the overnight aide that she had "forgot she had to work this morning." As a result of this additional tardy, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism excessive and unexcused can constitute misconduct. Rule 871 IAC 24.32(7). Tardies are treated as absences for purposes of unemployment insurance law. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). The presumption is that tardiness is generally within an employee's control. *Higgins*, supra. The claimant's final tardy was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future occurrences could result in termination. *Higgins*, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's July 3, 2014 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 18, 2014. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs