

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHANIE L TRANMER**  
Claimant

**APPEAL NO. 15A-UI-04560-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PARAMOUNT EMERGENCY MEDICAL  
SERVICES**  
Employer

**OC: 03/22/15**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Paramount Emergency Medical Services (employer) appealed a representative's April 6, 2015, decision (reference 01) that concluded Stephanie Tranmer (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 11, 2015. The claimant participated personally. The employer participated by Marvin Ney, Service Director, and Patty Yockey, Supervisor. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 13, 2014, as a full-time emergency medical technician. The claimant signed for receipt of the employer's handbook at the time of hire. The employer talked to the claimant in January 2015 and October 21, 2014, about her absenteeism. On February 25, 2015, the employer issued the claimant a written warning for absenteeism. The employer notified the claimant that further infractions could result in termination from employment.

The employer recorded the claimant was tardy eleven times. One of those times the claimant was at work but forgot to punch in. Two of those times her supervisor sent her to collect inebriated employees. Once she arrived at work late because the employer knew she was at her military drill. Another day she had a doctor's appointment. The other six times were for personal reasons. The claimant left work early once for illness and once to attend military drills.

The employer reported the claimant was absent eight days. She attended or traveled to military drills four of those days. She properly reported illness once. The claimant worked one of the days. She took two days off for personal reasons.

On March 21, 2015, the claimant fell down a flight of stairs. She properly reported her absence from work due to injury. Her physician wrote a note indicating she could not work on March 21, 2015. On March 23, 2015, the employer terminated the claimant for absenteeism.

The claimant filed for unemployment insurance benefits with an effective date of March 22, 2015. The employer participated personally at the fact-finding interview on April 3, 2015, by Patty Yockey.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(1)a provides:

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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a properly reported medical injury which occurred on March 21, 2015. The claimant's absence does not amount to job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's April 6, 2015, decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs