IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SHARI L ARNOLD
Claimant

CHRISTIAN RETIREMENT HOMES INC
Employer

APPEAL NO. 08A-UI-00061-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/25/07 R: 04
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Shari L. Arnold (claimant) appealed a representative's December 24, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Christian Retirement Homes, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 17, 2008. The claimant participated in the hearing. Kathy Walker appeared on the employer's behalf and presented testimony from one other witness, Becky Blumer. Based on the evidence, the arguments of the parties, and the law, 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 July 5, 2005. As of about June 22, 2007 she worked on a PRN (*Pro re nata* – commonly used to mean "as needed") basis as a certified nursing aide (CNA) in the employer's long-term care nursing facility. Her last day of work was November 29, 2007. The employer discharged her on that date. The reason asserted for the discharge was excessive tardiness.

The claimant had a prior attendance problem, and normally would not have been allowed to go onto a PRN status. The claimant was not working at all due to a health issue in August through October. She went back to work in November; in a phone conversation in early November the employer had emphasized the need for the claimant to be prompt and reliable in her attendance.

The employer scheduled the claimant to work on November 21 starting at 10:00 p.m. She was about ten minutes late for that shift. She asserted this was because she had gone to the back door, which was locked at that hour, and had to go around to the front. As a result, on November 27 the employer met with the claimant and advised her that she was being given a last chance, with which the claimant agreed to abide.

On November 29, 2007, the claimant was scheduled for a shift to begin at 5:45 a.m. Her car broke down a few blocks away from the facility, but she was able to pull it into a parking lot off the road. She then ran the remainder of the distance, but was still at least three minutes late. As a result of this final occurrence after the final warning, she was discharged.

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.

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.

871 IAC 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.

871 IAC 24.32(7) provides:

> (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.

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). Tardies that are due to issues that are of purely personal responsibility such as having reliable transportation are not excusable. 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 tardies could result in termination. Higgins, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's December 24, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of November 29, 2007. 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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