

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANET R TAYLOR
Claimant

APPEAL NO. 12A-UI-14249-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AADG INC
Employer

OC: 11/04/12
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Janet Taylor, filed an appeal from a decision dated November 28, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 7, 2013. The claimant participated on her own behalf. The employer, AADG, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Janet Taylor was employed by AADG from November 2008 until November 1, 2012 as a full-time assembler. She was absent from work due to transportation problems October 29 and 30, 2012. She had been absent three other days in October 2012 for which she had doctors' statements. Ms. Taylor claims to have no idea of the attendance policy specifics and also that she never received any type of warning regarding her absenteeism during the course of her employment.

REASONING AND CONCLUSIONS OF 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 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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Ms. Taylor has denied all knowledge of the attendance policy specifics and claims never to have received a written warning regarding absenteeism. The employer did not participate to provide evidence regarding these issues and therefore the claimant's testimony has not been rebutted.

There is no evidence of excessive, unexcused absenteeism or of prior warnings advising her that her job was in jeopardy. The employer has failed to meet its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of November 28, 2012, reference 01, is reversed. Janet Taylor is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/tll