

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RHONDA L TAYLOR**  
Claimant

**APPEAL NO. 12A-UI-02918-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CONSAMUS AND HAMPTON  
DENTAL CLINIC PLC**  
Employer

**OC: 01/29/12**  
**Claimant: Appellant (1)**

Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Rhonda Taylor filed a timely appeal from the March 21, 2012, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on April 9, 2012. Ms. Taylor did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Dr. Mary Consamus, D.D.S., represented the employer and presented additional testimony through Dr. Justin Hampton, D.D.S. Exhibits One through Five were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer operates a dental clinic in Ames. The partners in the clinic are Drs. Mary Consamus, D.D.S., Joe Consamus, D.D.S., and Justin Hampton, D.D.S. Rhonda Taylor was employed by Consamus and Hampton Dental Clinic as a full-time dental assistant from October 24, 2011 until January 20, 2012, when the employer discharged her from the employment.

The final events that triggered the discharge occurred on January 20, 2012. Ms. Taylor was scheduled to work from 8:00 a.m. to 3:00 p.m. The clinic was short-staffed that day. At around 10:00 a.m., Ms. Taylor was assisting Dr. Mary Consamus with a patient in a treatment room. The room was relatively small in size. At one point, Dr. Consamus needed to use the monitor in the room to show the patient a picture taken by an intraoral camera. Ms. Taylor was in the same area of the small room where Dr. Consamus was maneuvering to show the picture to the patient. Neither the patient nor Dr. Consamus was aware of anything untoward happening as Dr. Consamus interacted with the patient. However, Ms. Taylor apparently believed that Dr. Consamus had somehow pushed her out of the way. Dr. Consamus had not in fact pushed Ms. Taylor. Ms. Taylor exited the treatment room while Dr. Consamus was still interacting with the patient and while Ms. Taylor's assistance with the patient was still needed.

A short while later, Dr. Consamus was waiting to receive an x-ray for the patient, but the x-ray did not appear on her computer monitor. Dr. Consamus located Ms. Taylor and another dental assistant in a break area. Dr. Consamus indicated she needed someone to assist with finishing up with the patient. Though Ms. Taylor was assigned to work with Dr. Consamus at the time, the other dental assistant responded to assist with the patient.

A short while later, Ms. Taylor entered Dr. Consamus' office. Ms. Taylor told Dr. Consamus that she did not appreciate being pushed by Dr. Consamus. Dr. Consamus told Ms. Taylor that if she had touched her in anyway, it was so the monitor screen would not hit Ms. Taylor. Dr. Consamus had not previously been aware of any physical contact with Ms. Taylor in the treatment room. Dr. Consamus was taken aback by the allegation that she had pushed Ms. Taylor. Dr. Consamus told Ms. Taylor that if Ms. Taylor felt that Dr. Consamus had pushed her, then she did not think that she and Ms. Taylor should work together anymore. The conversation moved on to Dr. Consamus stating that she had not been happy with an incident wherein Ms. Taylor had tripped over a cord and wacked a patient in the face. Ms. Taylor asserted that had been an accident and Dr. Consamus conceded it probably was. Ms. Taylor told Dr. Consamus that she always felt behind in her work. Dr. Consamus acknowledged that the office was busy. Dr. Consamus closed the conversation by repeating that she did not think she and Ms. Taylor could work together. Dr. Consamus directed Ms. Taylor to work the rest of the day and that the partners would discuss her employment.

Ms. Taylor did not work the rest of her scheduled shift on January 20. Instead, Ms. Taylor left at 10:33 a.m., without authorization. Before Ms. Taylor left, she told a receptionist that she would wait to hear from the employer over the weekend.

Later in the day on January 20, the partners discussed Ms. Taylor's employment and decided to discharge her from the employment. Dr. Hampton notified Ms. Taylor of the discharge. In making the decision to end the employment, the employer considered the events of January 20 and an earlier absence. The employer considered Ms. Taylor's allegation that Dr. Consamus had pushed her, Ms. Taylor's departure from the treatment room at a time when her assistance with the patient was still needed, and Ms. Taylor's unauthorized early departure from the workplace.

The earlier absence had occurred on January 18. On that day, Ms. Taylor had called or sent a text message to another dental assistant shortly before Ms. Taylor was scheduled to arrive for work to indicate that Ms. Taylor would not be at work that day due to stress. The employer lacked a written or formal absence notification policy, but expected that any employee needing to be absent would speak with one of the partners.

## **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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The weight of the evidence indicates that the physical contact between Dr. Consamus and Ms. Taylor was accidental and was misinterpreted by Ms. Taylor. While Ms. Taylor's untimely absence from the treatment inconvenienced Dr. Consamus, given Ms. Taylor's belief that she had been pushed and her upset state, it was reasonable for Ms. Taylor to leave the room to collect herself. Ms. Taylor's act of bringing her concern to the attention of Dr. Consamus was also reasonable, though Dr. Consamus understandably did not appreciate being accused of pushing an employee. This leaves the attendance matters. Dr. Consamus did not direct Ms. Taylor to leave early on January 20. Nor did Dr. Consamus tell Ms. Taylor that she was discharged from the employment. Instead, what Dr. Consamus told Ms. Taylor was that Ms. Taylor was to work the rest of the day and that the partners would discuss Ms. Taylor's employment. Both parties needed some time to cool down. Ms. Taylor elected to leave work early without authorization, which left the short-staffed dental clinic in a further bind. The unauthorized early departure on January 20 was preceded by a questionable absence two days

earlier. Though Ms. Taylor was a new employee, a reasonable person in her position would know to notify the employer—that is, one of the partners, rather than notifying a coworker—of the need to be absent. In addition, the evidence does not indicate that the January 18 absence was due to bona fide illness. Both the January 18 and 20 absences were unexcused absences. Given the short duration of the employment and the proximity of the absences, the administrative law judge concludes that the absences were excessive and constituted misconduct in connection with the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Taylor was discharged for misconduct. Accordingly, Ms. Taylor is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Taylor.

**DECISION:**

The Agency representative's March 21, 2012, reference 02, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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