

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VIETTA R SANCHEZ
Claimant

APPEAL NO. 10A-UI-13821-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 09/05/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 29, 2010, reference 01, that concluded she was discharged for work-connected misconduct. Hearings were held in-person on January 24 and by telephone on January 28, 2011. The parties were properly notified about the hearing. The claimant participated in the hearings. Eka Uto participated in the hearing on behalf of the employer with a witness, Matthew Powell.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a sales and service associate from October 5, 2009, to September 9, 2010. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled.

The claimant had the following attendance occurrences in 2010. She missed work due to car problems on January 25 and March 16. She went to Texas due to a family emergency and was absent on April 15 when she had car problems on the trip back. She was late for work on March 17 and 18. She was also absent from April 27 to 29. The claimant received warnings regarding her attendance including a final warning on July 21, 2010. Other than times she missed work due to car problems, her absences were due to her illness or her child's illness. She properly notified the employer.

The claimant was absent from work with proper notice to the employer on September 1, 2010, because her five-year-old son was sick and required her care. On September 3, the claimant notified her supervisor that she would need to leave work early on September 8 for scheduled pre-natal doctor's appointment followed by an ultrasound appointment. Her supervisor told her the absence would be unexcused because she did not have any form of leave to cover it. The claimant left work early for the appointment on September 8. On September 9, the claimant

was late for work because her son missed the school bus and the claimant had to take him to school.

The employer discharged the claimant on September 9, 2010, for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

871 IAC 24.32(7) provides:

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 failed to meet its burden of proof that the claimant's absenteeism amounts to disqualifying misconduct. Most of her absences were for legitimate illness or necessary medical appointments about which the employer received proper notice. The absence on September 1 was for legitimate family health reasons. The pre-natal and ultrasound appointments should be considered excused as the employer was notified in advance about them, and pre-natal care is a legitimate reason for missing work. The circumstances surrounding her reporting late for work on September 9 may have been avoidable but do not show willful and substantial misconduct or repeated negligence equaling willful misconduct in culpability.

DECISION:

The unemployment insurance decision dated September 29, 2010, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs