

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BAILEY M MENDENHALL**

Claimant

**APPEAL NO: 09A-UI-14496-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OZARK AUTOMOTIVE DISTRIBUTORS INC**

Employer

**OC: 08/23/09**

**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Ozark Automotive Distributors, Inc. (employer) appealed a representative's September 16, 2009 decision (reference 01) that concluded Bailey M. Mendenhall (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 22, 2009. The claimant participated in the hearing. Whitney Smith, a human resource supervisor, appeared on the employer's behalf. 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:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on May 21, 2007. The claimant worked as a full-time assistant return supervisor. The employer's attendance policy informs employees about the progressive discipline procedure for attendance issues. An employee's third written warning, a decision making leave day or final written warning, informs the employee that she can be discharged if she has another attendance issue within 30 days of the decision-making leave day.

The employer gave the claimant a written warning for reporting to work late on March 11, 2009. The claimant was scheduled to work at 3:30 a.m. to help another employee. The claimant is not a morning person and arrived late for work. The claimant received her second written warning on May 4, 2009. The claimant had been reporting to work at 9:00 a.m. and her shift changed to 6:30 a.m. The claimant overslept and was late for work. On June 5, the claimant received her third written warning or decision-making leave day for reporting to work 2.5 hours late. The claimant worked 6:00 a.m. Monday through Wednesday, but was scheduled to work at 3:30 a.m. on Thursday. The claimant did not agree that she should have received a written warning when the employer changed her shift in the middle of the week. The claimant,

however, understood her job was in jeopardy if she had another attendance occurrence within three months.

The claimant did not have any attendance issues until August 14. When the claimant tried to start her car to get to work, it would not start. The claimant was scheduled to be at work at 6:30 a.m. The claimant's car is older and sometimes does not start immediately. At 6:15 a.m. when her car did not start, the claimant tried various things to get her car to start. The claimant thought she could get her car started so she could get to work, and the time slipped away from the claimant. At 7:00 a.m., her car still had not started. The claimant contacted the operations manager and told him she would be late because her car would not start. The claimant reported to work at 7:30 a.m.

The employer discharged the claimant because she had another attendance occurrence within three months of receiving her final written warning. In accordance with the employer's attendance policy, the employer discharged the claimant on August 14, 2009.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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. 871 IAC 24.32(8).

Pursuant to its attendance policy, the employer established business reasons for discharging the claimant. The claimant knew and understood her job was in jeopardy for attendance issues when she received her final written warning on June 9, 2009. For unemployment insurance purposes, the claimant did not commit work-connected misconduct. On August 14, the claimant had no way of knowing her car would not start. The claimant did not intentionally fail to report to work on time. She took reasonable steps to report as scheduled, but was unable to get her car started right away. The claimant did not commit work-connected misconduct. As of August 23, 2009, the claimant is qualified to receive benefits.

**DECISION:**

The representative's September 16, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of August 23, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css