

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER M PICKERING
Claimant

APPEAL NO. 07A-UI-04076-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD'S INC
Employer

**OC: 04/01/07 R: 03
Claimant: Respondent (1)**

Section 96.5-2- a- Discharge

STATEMENT OF THE CASE:

Dillard's, Inc. (employer) appealed a representative's April 13, 2007 decision (reference 01) that concluded Amber M. Pickering (claimant) was qualified to receive unemployment insurance 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 May 7, 2007. The claimant participated in the hearing. The employer failed to respond to the hearing notice by calling the Appeals Section prior to the hearing and providing the phone number at which the employer's witnesses/representative could be contacted to participate at the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, 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 employer hired the claimant in August 2006. The claimant worked as a full-time sales associate. Shortly after the claimant began working, she was ill and called in sick. In late December or early January, the employer gave the claimant a written warning for having an unexcused absence after she put her car in the ditch. The written warning did not indicate she could be discharged if she had any further unexcused absences.

On February 17 and 18, the claimant notified the employer she was unable to work as scheduled because of an ice storm and adverse road conditions. The claimant followed the State Highway Patrol's recommendation that she not travel unless it was an emergency. The claimant understood that if three or more employees notified the employer they could not report to work because of adverse weather conditions, the employer would not count this absence as unexcused. When the claimant called to report she was unable to work these days, the person who answered the phone indicated many employees notified the employer that they were unable to work these two days. When the claimant returned to work on February 20, she asked if her job was jeopardy because she had been absent two days. Management was busy getting ready for a store visit and a manager indicated there was no time to look at the claimant's attendance record. On March 5, the employer discharged the claimant because of her unexcused absences on February 17 and 18.

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).

The employer may have had business reasons for discharging the claimant. The evidence does not establish that she intentionally or substantially disregarded the employer's interests when she did not report to work on February 17 and 18. The claimant properly notified the employer that she was unable to work as a result of adverse weather and road conditions. The facts do not establish that the claimant committed work-connected misconduct. As of April 1, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements.

DECISION:

The representative's April 13, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 1, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw