

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA J WILD
Claimant

APPEAL NO: 11A-UI-11018-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINN MAR COMMUNITY SCHOOL DISTRICT
Employer

OC: 07/24/11
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 15, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for reasons that do not constitute a current act of work-connected misconduct. The claimant participated in the hearing. Phil Miller, a human resource generalist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in November 2007. The claimant worked as a full-time educational assistant for a special needs student. Even though the claimant received good reviews for her work, the claimant had a problem reporting to work on time and/or punching in when she got to work.

The employer had a meeting with the claimant on February 23, 2011. In addition to talking about some other issues, the employer talked to her about on-going attendance issues. She had been late for work 75 times since the school year started in September 2010. The claimant was late when she had problems getting her 15-year-old daughter to the bus on time. When her daughter missed the bus, the claimant drove her to high school. This then resulted in the claimant being late for work. The claimant asked the employer if she could start at 8:25 a.m. instead of 8:20 a.m., but the employer declined this request. On February 25, 2011, the employer gave the claimant a written warning about the issues discussed on February 23. The warning informed the claimant that further problems could result in her discharge. The claimant understood her job was in jeopardy.

After the February 25 warning, the claimant was not late for work until April 19. On April 19, the claimant was five or seven minutes for work. The claimant did not punch in when she got to

work. The claimant was late on April 19 because her daughter missed the school bus. On April 21, the claimant overslept. She called the employer at 7:58 a.m. to report she had overslept. The claimant believed she got to work just before 9 a.m., but she did not punch in until 10:27 a.m.

On April 22, 2011, the employer discharged the claimant for repeatedly reporting to work late. The claimant established a claim for benefits during the week of July 24, 2011.

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 claimant was late for work on April 19 and then overslept so she was also late on April 21 which were the final incidents that led to her discharge.

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7). The claimant has had an on-going problem about reporting to work on time. As of February 23, 2011, she had been late for work 75 times since September or the beginning of the school year. The primary problem was the claimant's 15-year-old daughter who missed the bus so the claimant took her to school. The claimant understood her job was in jeopardy after she received the February 25, 2011 warning. The employer did not document any problems reporting to work late until April 19. Again, the claimant's high school daughter missed the bus which resulted in the claimant being five to seven minutes late for work. Since the claimant had on-going problems getting her daughter to the bus on time, it was her responsibility to make alternative arrangements for getting her daughter to school, so the claimant would not be late for work. The claimant did not make alternative arrangements. The claimant believed she had to personally take her daughter to high school, but this decision resulted in her discharge. The claimant's failure to take reasonable or make alternative plans to make sure her daughter got to high school and still get to work on time constitutes work-connected misconduct. The claimant's actions or inaction substantially disregarded the employer's interests. As of July 24, 2011, the claimant is not qualified to receive benefits.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment for benefits she may have received since July 24 will be remanded to the Claims Section to determine.

DECISION:

The representative's August 15, 2011 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 24, 2011. This

disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs