

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA J ASSENMACHER
Claimant

APPEAL NO. 07A-UI-00288-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUSTOM-PAK INC
Employer

**OC: 12/10/06 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 29, 2006, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on January 24, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Andrea Lawrence participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a machine operator from September 9, 1981, to November 11, 2006. 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 and promptly provide medical documentation and a request for leave for extended absences. In April 2006, the claimant had been warned after she missed work for three weeks. She was calling in her absences at points in time when she knew she would not have to speak to anyone personally. She was not answering calls made by her supervisor to find out her work status or returning messages. The claimant had used Family and Medical Leave Act (FMLA) leave to cover past periods of absence and knew that she was required to submit medical documentation supporting her time off.

Starting November 13, 2006, the claimant began calling in absent each workday. She was absent due to depression. She continued to call daily, but at times when she knew no one was at the place of business. She did not answer calls made by her supervisor to find out her work status or return messages left by her supervisor.

When the claimant had not reported to work, spoken to her supervisor, or provided medical documentation supporting her absence by November 29, 2006, the human resources director, Boni Hugunin, sent her a letter. In the letter, the claimant was required to provide written

documentation of her illness or injury by 4:30 p.m. on December 5, 2006. She was informed that she could supply the documentation in person or fax the information to the employer.

The claimant received the letter on December 5, 2006, before the deadline for responding but did not supply the documentation or contact the employer to ask for an extension of the deadline so that she could submit documentation excusing her from working. Instead, she called the employer at 3:20 a.m. and left a message that "Won't be in, under doctor's care."

On December 6, 2006, the employer sent a letter to the claimant discharging her for failing to report to work or provide the required medication documentation excusing her from working.

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.

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 claimant's violation of the instruction to provide medical documentation was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. She knew from past experience that it was not acceptable to miss work for an extended period of time without communicating personally with her supervisors regarding FMLA or providing medical

documentation excusing her from working. She has not supplied evidence that she was medically incapable of carrying out this simple and reasonable instruction. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated December 29, 2006, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw