IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

WANDA S HOSKINS
Claimant

WESTAR FOODS INC
Employer

APPEAL NO: 12A-UI-04011-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/04/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wanda S. Hoskins (claimant) appealed a representative's April 9, 2012 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Westar Foods (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 1, 2012. The claimant participated in the hearing. Jeff Oswald of Unemployment Insurance Services appeared on the employer's behalf and presented testimony from one witness, Cody Lang. During the hearing, Employer's Exhibits One and Two were entered into evidence. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on or about November 30, 2009. She worked part time (30 to 40 hours per week) as a crew member at the employer's Waterloo, Iowa fast food restaurant. Her last day of work was March 2, 2012. The employer discharged her on March 4, 2012. The reason asserted for the discharge was excessive absenteeism.

The claimant had been absent on December 28, 2011 due to being intoxicated; she did not give adequate notice to the employer of this absence. As a result, on December 29 she was given a written warning. She was also absent on February 10, 2012, and was a no-call, no-show. When the employer called her to see if she was going to report for the shift, she indicated that she had forgotten that she was scheduled to work, and that she did not have transportation arranged to get there that day. As a result, on February 11 she was given a final written warning.

On March 3 the claimant was scheduled to work a 7:30 a.m.-to-4:00 p.m. shift. The claimant called the employer at about 6:00 a.m. to report that she would be late because she did not have transportation to get to work. She called back later at about 9:30 a.m. and indicated that

she still did not have transportation; she asked the assistant manager on duty to give her a ride, as on occasion a manager would give an employee a ride to work if there were adequate staff to cover the restaurant. However, the restaurant was very busy that morning and the employer was short-staffed, so the assistant manager declined to give the claimant a ride. As a result of this additional occurrence after the final warning, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). Tardies are treated as absences for purposes of unemployment insurance law. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Absences due to issues that are of purely personal responsibility, specifically including transportation arrangements, are not excusable. *Higgins*, supra; *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984). The claimant's final absence was not excused and was not due to illness or other reasonable grounds. The fact that the employer might have on occasion provided a ride to an employee if the employer had sufficient coverage and the restaurant was not too busy does not mean the employer had an obligation to provide transportation to the claimant on this occasion. The claimant had previously been warned that future absences could result in termination. *Higgins*, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's April 9, 2012 decision (reference 02) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 4, 2012. 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/kjw