IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

AIMMIE G CARTER
Claimant

THOMAS L CARDELLA & ASSOCIATES INC
Employer

APPEAL NO. 10A-UI-05649-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 06/21/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Aimmie G. Carter (claimant) appealed a representative's April 5, 2010 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Thomas L. Cardella & Associates, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 3, 2010. The claimant participated in the hearing and was represented by James Ellefson, attorney at law. Mike Mortensen, attorney at law, appeared on the employer's behalf and presented testimony from two witnesses, Mark Grego and Kristy Eisenbrager. 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 August 10, 2009. She worked full-time as a contact center specialist in the employer's Marshalltown, Iowa, call center. She normally worked Monday through Friday, 12:30 p.m. to 9:00 p.m. Her last day of work was March 16, 2010. The employer discharged her on that date. The reason asserted for the discharge was having excessive attendance occurrences.

The employer's policies provide for termination if an employee accumulates four attendance occurrences within a rotating period. The claimant had an occurrence on November 20, 2009, a combined occurrence on January 22 and January 25, 2010 due to leaving early and being absent due to an illness, a half-occurrence on February 2 due to being a half-hour late for work as a ride to work did not show up, and a half-occurrence on February 5 due to being a few minutes late back from a lunch break. She had been given a final warning on February 5. Her understanding was that she was at 3.5 occurrences; her supervisor had advised her that as of March 10 a half-occurrence would fall off, bringing her back down to three occurrences.

On March 15 the claimant was assessed a half-occurrence for being late returning from work. As she was already getting assessed a half-occurrence, she inquired if she could leave early that evening; her understanding was that if she worked more than four hours in the day, the most she could be assessed would be a half-point, which she believed would take her back to 3.5 points. The employer agreed she could leave early, and she left that evening about 2.5 hours early, but worked about 5.5 hours. When she reported in for work the next morning, she was discharged for excessive attendance occurrences.

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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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).

The reason cited by the employer for discharging the claimant is her attendance occurrences. Excessive unexcused absences can constitute misconduct; however, in order to establish the necessary element of intent, the final incident must have occurred despite the claimant's knowledge that the occurrence could result in the loss of her job. Cosper, supra; Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). Here, the claimant reasonably believed that she was only at three occurrences as of the morning of March 15, and that she would at worst be at 3.5 occurrences. The employer has not demonstrated how the claimant could have reached the four occurrence level or could have known she would reach the four occurrence level other than if she was not assessed a full occurrence for March 15, even though she had worked more than four hours. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's April 5, 2010 decision (reference 02) is reversed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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