

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHNCE M TOLEFREE

Claimant

APPEAL NO: 10A-UI-15580-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE TJX COMPANIES INC

Employer

OC: 08/15/10

Claimant: Respondent (1)

Iowa Code § 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's October 28, 2010 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 nondisqualifying reasons. The claimant participated in the hearing. Gary Schneider, the store manager, appeared on the employer's behalf. During the hearing, Claimant Exhibits A and B were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant 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 October 2009. He worked full time in the jewelry department. The employer's attendance policy informs employees that if they have 12 absences in a 12-month time frame, they will be discharged. Also, if an employee does not call or report to work for three consecutive days, the employer considers the employee to have abandoned the job.

On May 13, 2010, the employer gave the claimant a written warning for on-going attendance issues. (Claimant Exhibit A.) At that time the claimant had ten absences, eight tardies and one no-call, no-show incident. (Claimant Exhibit B.)

On June 7, the claimant received a call from his child's school to pick up the child because he was ill and the school could not reach the child's mother. The claimant does not have a car, but a friend drove him to the school. The claimant was scheduled to work 2 to 10 p.m. He called the employer and talked to Mary around 1:30 p.m. The claimant explained the situation and that he was trying to contact the child's mother so he could report to work. Mary told the claimant that if he was unable to get to work by 5:30 p.m., he did not need to report to work. The child's mother did not contact the claimant until 6 p.m. The claimant understood he was discharged if he was not able to get to work by 5:30 p.m.

The claimant was not scheduled the next day, but was on June 9. The claimant did not report to work because he understood he had already been discharged. A co-worker sent him a text message asking him why he was not work. After the claimant explained he had been discharged, the co-worker told him he had not been discharged but he needed to call and talk to Mary. The claimant called to talk to Mary but instead talked to E.F. After talking to her, he understood that if he got to work before his shift ended, he would be considered tardy. The claimant took public transportation to work and it took about an hour to get to work. The claimant was unable to get to work before his shift ended.

The next day, June 10, the claimant talked to Mary. Mary told the claimant he no longer had a job because he was not at work the day before. Schneider was on vacation in early June. When he returned, management recorded the claimant as having three no-call, no-show incidents because he had not reported to work after June 4.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

Since Schneider was on vacation in early June, he relied on information recorded by other managers. The claimant's testimony as to what happened in early June is credible and must be given more weight than Schneider's reliance on hearsay information from employees who did not participate in the hearing.

Although the employer asserted the claimant did not call or report for three days, the evidence does not support this assertion. The claimant was absent from work on June 7 and 9, which meant he then had 12 absences in a 12-month time frame. The claimant used poor judgment when he failed to talk to Mary on his day off, June 8, to explain what he had done to get to work and why he had not been able to work on June 7. If the claimant had done this, he would have realized he had not been discharged on June 7 and would have reported to work as scheduled on June 9. This did not happen. As a result of miscommunication or a misunderstanding the claimant did not report to work on June 9 and could not get to work before the end of his shift. By the time the claimant talked to Mary again on June 10, he had 12 absences and had been discharged.

The employer established justifiable business reasons for discharging the claimant. The evidence does not, however, show that the claimant intentionally failed to work as scheduled. He did not commit a current act of work-connected misconduct. As of August 15, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's October 28, 2010 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of August 15, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs