

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY S DURBIN**  
Claimant

**APPEAL NO: 07A-UI-01365-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OZARK AUTOMOTIVE DISTRIBUTORS INC**  
Employer

**OC: 01/07/07 R: 02**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Ozark Automotive Distributors, Inc. (employer) appealed a representative's February 2, 2007 decision (reference 01) that concluded Kimberly S. Durbin (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 20, 2007. Neither party responded to the hearing by calling the Appeals Section prior to the hearing as the hearing notice instructed the parties to do. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on May 3, 2006. The claimant received a copy of the employer's attendance policies. The employer informs employees that during the first 21 days of employment the employee's attendance is considered unsatisfactory if the employee has one attendance occurrence. If an employee has two or more attendance occurrences during the first 84 days of employment, the employee's attendance is not satisfactory. The policy states that unsatisfactory attendance during the first 90 days may result in the employee's termination.

On May 16, 2006, the employer gave the claimant a written warning because she did not work on May 12 and 15. On July 24, the claimant received her 84-day evaluation. The employer extended her training period for another 30 days because her attendance was not satisfactory. On August 21, 2006, the claimant reported to work late. The employer discharged the claimant on August 22 for unsatisfactory attendance.

**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 section 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).

The employer established business reasons for discharging the claimant. The record does not, however, establish that the claimant intentionally or substantially failed to work as scheduled. The employer did not establish that she committed work-connected misconduct. Therefore, as of January 7, 2007, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's February 2, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of January 7, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs