

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBORAH S NORMAN**  
Claimant

**APPEAL NO. 10A-UI-05387-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 03/07/10**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated April 1, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 27, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Whitney Judkins. Daniel Speir participated in the hearing on behalf of the employer with witnesses, Jay Wadding and Valerie Scar. Exhibits 1-6 were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer from August 1, 1998, to February 4, 2010. For the last year, she worked as a cake decorator. From November 2009 to February 2, 2010, the claimant was late for work several times, mostly due to back problems or illness. She notified the employer when she was going to be late. On January 5, 2010, the claimant was sick and had taken a night-time cold medication that caused her to oversleep. She reported to work over an hour late. She was warned that if she was written up again, she would be terminated.

On February 2, 2010, the claimant was involved in an accident with her car in which she hit a curb, which damaged her tire. She called the employer to notify a supervisor that she was going to be late. She had to flag another motorist down to help her change the tire. She was over an hour late for work. Nothing was said to her when she reported late for work.

On February 4, 2010, the employer discharged the claimant due to unsatisfactory work performance and absenteeism. She was not late on her last day of work.

**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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Unsatisfactory work performance does not meet the definition of work-connected misconduct under the unemployment law. The final tardy on February 2 was due to an emergency situation that was not the claimant's fault. She properly reported her tardy to the employer. No willful and substantial misconduct has been proven in this case.

**DECISION:**

The unemployment insurance decision dated April 1, 2010, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/pjs