

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CRYSTAL STEWART**  
Claimant

**APPEAL NO: 12A-UI-10073-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AT & T MOBILITY SERVICES LLC**  
Employer

**OC: 07/29/12**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's August 17, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. The employer did not participate in the hearing. On September 6, the day after the scheduled hearing, the employer sent documents to the claimant and the Appeals Section. These documents cannot be considered because the employer's representative mailed them after the scheduled hearing and the employer did not respond to the hearing notice.

Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is 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 September 2010. The claimant worked as a full-time customer service representative. The claimant knew the employer's attendance policy allowed employees to only accumulate eight attendance points a year. In May 2012, the claimant received a written notice she had accumulated seven attendance points. The claimant received these points when she had been absent for personal reasons.

The claimant was absent on July 24 and 25 for a family member's funeral. She told her supervisor in advance that she needed these days off for the funeral. The employer gave the claimant attendance points for these absences. The employer did not excuse these absences as bereavement leave. On her way to work on July 27, one of the tires on the claimant's car blew out. As a result of tire problems, the claimant was late for work and received one point. On July 25, the claimant received information that the employer was going to discharge her for attendance issues or the employer would allow her to resign. The claimant informed her supervisor she wanted union representation. On July 28, the claimant was pulled over by a law enforcement official and was again late for work. The employer gave her another attendance point.

On July 30, 2012, the employer discharged the claimant for violating the employer's attendance policy by accumulating 11 attendance points in a year.

**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 § 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).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The facts establish that as of July 25, the employer made the decision to end the claimant's employment when the claimant's supervisor told her she could resign or be discharged. As of July 25, the employer had assessed the claimant nine attendance points, which violated the employer's attendance policy.

The claimant's most recent attendance points on July 24 and 25 occurred because the claimant went to a family member's funeral. The facts indicate she told her supervisor in advance about the funeral. The claimant established reasonable grounds for being absent on July 24 and 25. While the employer discharged the claimant for justifiable business reasons (violating the employer's attendance policy), the claimant did not commit work-connected misconduct. As of July 29, the claimant is qualified to receive benefits.

**DECISION:**

The representative's August 17, 2012 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons when she accumulated nine attendance points as of July 25, 2012. The last two attendance points the claimant received occurred when she attended a family member's funeral. Since she gave the employer proper notice about the funeral, the claimant did not commit work-connected misconduct. As of July 29, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs