

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETTY J MOWREY
Claimant

APPEAL NO. 07A-UI-03751-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARSDEN BLDG MAINTENANCE LLC
Employer

**OC: 03/04/07 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Betty J. Mowrey (claimant) appealed a representative's April 9, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Marsden Building Maintenance LLC (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 26, 2007. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant 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 April 1, 2002. Prior to her employment separation, the claimant worked full-time. In late January 2007, the claimant was transferred to Des Moines. As a result of her transfer, she had new supervisors and management she reported to. Initially, the claimant worked as an area manager in Des Moines.

On or about February 12, the employer put the claimant on 90-day probation after a customer complained about the way his building was cleaned. The claimant understood the employer put her on probation so she could focus on her job. The following Monday, February 19, the employer demoted the claimant and assigned her to another building as a supervisor.

The employer knew the claimant had transportation problems. An area manager picked up the claimant and other employees and took them to their assigned buildings. As a result of her transportation problems, the claimant reported to her assigned building at 6:30 p.m. instead of 6:00 p.m. The area manager that took over the claimant's building in Des Moines asked for her

assistance and picked up the claimant between 12:00 and 12:30 a.m. so she could show him problem areas at her former building. The claimant was scheduled to work until 1:30 a.m.

The claimant did not think about contacting her immediate supervisor when an area manager brought her to work and was picked up to work at another building by an area manager. After the claimant was demoted, she learned a health problem she believed had been resolved was again active.

On February 27, the employer discharged the claimant because the employer did not tolerate the claimant reporting to work late and leaving work early. On days the claimant came to work late, she did not take a lunch or dinner break. Before she left to help an area manager at another building, all of her work was done. Before the claimant transferred, she had not received any warnings. Problems with her work occurred only after she transferred to Des Moines.

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).

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 may have had business reasons for discharging the claimant. The facts do not, however, establish that the claimant intentionally or substantially disregarded the employer's interests. The employer knew the claimant had transportation issues and an area manager picked her up and gave her a ride to work. While the facts establish the claimant left work early; she only left the building she was assigned to work early to train an area manager who was assigned the building the claimant previously supervised. When the employer put the claimant on probation, it was so she could focus, not for attendance issues. The claimant had no idea the employer considered her attendance a problem. The facts do not establish that the claimant committed work-connected misconduct. As of March 4, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 9, 2007 decision (reference 01) is reversed. The employer discharged the claimant. The evidence does not establish the claimant committed work-connected misconduct. As of March 4, 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw