

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE R HALSEY
Claimant

APPEAL NO. 08A-UI-06833-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OZARK AUTOMOTIVE DISTRIBUTORS INC
Employer

**OC: 06/22/08 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Ozark Automotive Distributors, Inc. (employer) appealed a representative's July 18, 2008 decision (reference 01) that concluded Michelle R. Halsey (claimant) was qualified to receive 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 August 11, 2008. The claimant participated in the hearing. Whitney Smith, a human resource supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 20, 2007. The claimant worked as a full-time in-bound material handler. R.O. supervised the claimant.

The claimant worked on May 19, 2008. The claimant contacted the employer on May 20, and reported she was hospitalized and unable to work. The claimant contacted the employer every day she was scheduled to work until June 23, 2008. When the claimant called, she informed the employer she was ill and unable to work.

The claimant had been hospitalized May 20 through June 7, 2008. When she was released from the hospital, her physician did not restrict her from working. The claimant, however, was unable to work because she was mentally distraught about her medical diagnosis. The claimant saw her treating physician about problems she experienced after her release from the hospital. After the claimant was released from the hospital, she informed R.O. she had doctor's statements verifying she was unable to work the days she called in to report she was unable to

work. The claimant understood that as long as she called in sometime during her scheduled shift, the employer did not consider her absence as a no-call/no-show situation.

When the claimant called on June 23, R.O. told the claimant she no longer had a job because he did not know what was going on with her.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a.

The employer asserted the claimant did not call or report to work anytime between May 20 and June 23, 2008. Since R.O did not testify at the hearing, the employer's reliance on hearsay information from him is not as credible as the claimant's testimony. Therefore, the claimant's version of what happened must be given more weight than the employer's hearsay information. The claimant's version of events is reflected in the findings of fact. A preponderance of the credible evidence does not establish that the claimant quit her employment. Instead, the evidence establishes the employer initiated the employment separation and discharged the claimant as of June 23, 2008.

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 evidence does not establish that the claimant committed work-connected misconduct. Instead, the claimant was unable to work when the employer ended her employment. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. Therefore, as of June 22, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's July 18, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of

June 22, 2008, the claimant is qualified to receive benefits, provide she meets all other eligibility requirements. The employers' account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css