IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

FRANKIE J GARREN Claimant **MENARD INC** Employer	**APPEAL NO. 14A-UI-11784-SWT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/24/14** **Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 7, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 4, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Lance Gesell participated in the hearing on behalf of the employer with a witness, Dawn Eldridge. Exhibits One through Six and A were admitted into evidence.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a forklift operator for the employer from March 11, 2014, to August 20, 2014. She worked Sunday to Wednesday, 4:00 p.m. to 2:30 a.m. She was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. Under the employer's policy if an employee receives 10 attendance points in a 90-day period.

The claimant was warned about her attendance on March 17, after receiving three attendance points for missing work due to a car accident with notice to the employer. She was again warned about attendance on June 8 after receiving three attendance points because she was stuck at the airport on June 1 with notice to the employer. She was also suspended for three days on June 8 because she received an additional three points for an unexcused absence on June 2.

The claimant had received chemotherapy on August 22. She did not feel well enough to work on August 24. She called in and reported that she would not be at work. The claimant was also absent due to illness on August 25. She called several times before the start of her shift but was not able to get through to the plant manager to speak to him. She did tell the person answering the phone that she was not able to work and wanted to talk to the plant manager.

The claimant was under a doctor's care on August 24 and 25 and excused from working until August 26.

The claimant reported to work as scheduled on August 26, 2014, but was discharged because the employer believed she had not attempted to call in on August 25 and had exceeded the points allowed under the attendance policy.

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 § 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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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 substantial and 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that she was sick and unable to work on August 24 and 25 and tried several times to talk to the plant manager on August 25. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated November 7, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

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