

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODY D REED
Claimant

APPEAL NO: 10A-UI-07348-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLMAN DYNAMICS INC
Employer

OC: 11/22/09
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's May 12, 2010 decision (reference 04) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. A telephone hearing was held on July 22, 2010. The claimant participated in the hearing. The employer did not respond to the hearing notice, or participate in the hearing. 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 employer rehired or reinstated the claimant on February 19, 2010. The employer rehired or reinstated the claimant with the understanding that during the first 45 days she could not miss any work or take any vacation. The claimant worked as scheduled on March 22.

On March 23, the claimant tested positive for influenza A. Her physician restricted her from working until her temperature was less the 100 degrees. The claimant was not able to return to work until March 29, 2010.

The claimant provided the employer with a doctor's statement verifying she was ill and could not work on March 23, and was not released to work until her temperature was less than 100 degrees. The employer discharged the claimant on March 23 because she was absent and violated the conditions that the employer had rehired her.

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 section 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 had justifiable business reasons for ending the claimant's employment. Based on the conditions she was rehired, the claimant violated her 45-day probation. The evidence does not establish that the claimant intentionally failed to work as scheduled. Instead, she was ill and her physician restricted her from working as of March 23, 2010. The claimant's inability to work as a result of illness does not constitute work-connected misconduct. As of March 21, 2010, the claimant is not disqualified from receiving benefits based on this employment separation. However, the record shows she was disqualified from receiving benefits based on an earlier employment separation. Therefore, the claimant remains disqualified from receiving benefits until she earns ten times her weekly benefit. The employer's liability for this benefit was previously determined.

DECISION:

The representative's May 12, 2010 decision (reference 04) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. Based on the reasons for this employment separation, the claimant is not disqualified from receiving benefits. However, an earlier employment separation in mid-November 2009 disqualified her. As a result, she remains disqualified from receiving unemployment insurance benefits as of November 22, 2009, until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs