

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JANEL N SOUDER**

Claimant

**APPEAL NO. 08A-UI-02381-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**METROGROUP MARKETING SERVICES**

Employer

**OC: 01/13/08 R: 04  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated February 28, 2008, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 25, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Debra Fox participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a machine operator from November 13, 2007, to January 10, 2008. She was informed and understood that under the employer's work rules, employees were required to notify the employer two hours before the start of their shift if they were unable to work as scheduled and were subject to termination if they received three occurrences during their first 90-day of employment.

The claimant was absent from work on January 12, 2008, because she cut her hand and was unable to work. She properly notified the employer about the absence and why she was not coming into work. She informed the employer that she would not be in until after she had seen a doctor. The claimant went to her doctor on January 14 and received a doctor's note taking her off work on January 12, 14, and 15. She properly called in on January 14 and informed the employer that she had the doctor's notice. The claimant brought in the doctor's note on January 15. The claimant was not scheduled to work on January 16 and 17. The claimant reported to work as scheduled on January 18, but was informed by the person staffing the desk where assignments were given out that her employment had been terminated due to absenteeism because she had previously been absent on January 1 and 4, 2008.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

## 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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

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 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 the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. No willful and substantial misconduct has been proven in this case. The claimant was absent due to legitimate medical reasons and properly reported her absences to the employer.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

**DECISION:**

The unemployment insurance decision dated February 28, 2008, reference 02, 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

saw/pjs