

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIA L PILCHER
Claimant

APPEAL NO. 13A-UI-03416-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALANIZ LLC
Employer

OC: 04/08/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 30, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 23, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Mike Owens participated in the hearing on behalf of the employer.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked full time for the employer as a machine operator from December 11, 1992, to February 14, 2013. She was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination after receiving eight attendance points.

The claimant was often absent from work under a doctor's care for anxiety, panic attacks, and depression in 2012 and 2013. She attributed her mental health issues to conditions at work during her last two years of work. She was off work on leave under the Family and Medical Leave Act (FMLA) with a doctor's certification. After she exhausted FMLA, the claimant received points for the following days of absence: January 17, January 18, January 19, January 20, February 5, February 8, and February 11, 2013. Some of the days were due to bronchitis and some were due to anxiety and depression. She properly notified the employer about her absences. She received a verbal warning on January 21, a written warning on February 11, and a final warning on February 13. She understood that her job was in jeopardy if she continued to miss work.

The claimant was unable to work on February 17, 2013, due to issues with anxiety and depression. She called in and properly reported her absence. The claimant reported to work as scheduled on February 18 and was discharged for excessive absenteeism.

The claimant filed an additional claim for unemployment insurance benefits effective February 24, and filed weekly claims through March 30, 2013.

The claimant is a high school graduate and applied for positions as a store clerk and convenience store clerk while she filed for unemployment insurance benefits. She has experience in the past working as a convenience store and grocery store clerk and nursing home cook. She stopped filing claims after deciding to go to school. The claimant's problem with anxiety and depression improved after she stopped working for the employer.

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. 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 unemployment insurance rules provide: "Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." 871 IAC 24.32(7).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. She was absent for medical reasons and properly notified the employer about her absences.

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full time endeavor that is generally available in the labor market. 871

IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work as a store clerk and other similar positions. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform, and she has been actively looking for such work in compliance with the requirements of the law.

DECISION:

The unemployment insurance decision dated March 30, 2013, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/tll