

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LATONYA V DOZIER

Claimant

APPEAL NO: 15A-UI-02809-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARMELITE SISTERS FOR THE AGED

Employer

OC: 02/08/15

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Latonya V. Dozier (claimant) appealed a representative's February 24, 2015 (reference 01) decision that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Carmelite Sisters for the Aged (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 1, 2015. The claimant participated in the hearing. Laura Williams 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on May 31, 2013. She worked full time as overnight charge nurse/licensed practical nurse (LPN) in the employer's long-term care nursing facility. Her last day of work was the shift from the evening of February 8 into the morning of February 9, 2015. The employer discharged her on February 12, 2015. The reason asserted for the discharge was excessive absenteeism.

The employer's attendance policy generally provides for discharge after ten occurrences. However, the claimant had been given a prior final warning for attendance on March 14, 2014, and was given a second final warning on January 15, 2015, at which point she was already at 11 occurrences. About four of the occurrences were due to lack of child care, and about three were due to personal illness or injury; the remainder were for miscellaneous reasons, generally other family issues. She understood that if she had a twelfth occurrence she would be discharged.

The claimant was scheduled to report for work at 10:00 p.m. on the evening of February 9. At about 4:00 p.m. she was arrested, as her estranged husband had filed a complaint of domestic battery against her. On such a charge there is no immediate bond or bail, so the claimant was unable to report for work that night; her sister contacted the employer prior to the shift to advise the employer of the situation and that the claimant would be absent. The claimant denied any battery upon her estranged husband but asserted he had made a false report out of malice towards her. In fact, the charge was ultimately dismissed for lack of evidence even without a hearing on March 13, 2014. However, because the claimant had the twelfth incident of absence after the second final warning, the employer had already discharged her on February 12.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive unexcused absenteeism can constitute misconduct. Rule 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. For example, absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Rule 871 IAC 24.32(7); *Cosper*, supra; *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007). By necessity, this then requires that the basis for the final absence be considered. Here, it appears that the basis for the final absence was not due to any act of volition on the claimant's part, but was due to a false and malicious assertion made by her estranged spouse.

This must be considered a reasonable ground to excuse the claimant's absence, at least for purposes of determining misconduct and eligibility for unemployment insurance benefits. Because the final absence was due to a reasonable basis outside of the claimant's control, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct, and no disqualification is imposed. Even if the employer had a good business reason for discharging the claimant, it has failed to meet its burden to establish misconduct. *Cosper*, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's February 24, 2015 (reference 01) decision is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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