

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MALAIKA J LUSTER
2120 SE EVERGREEN APT 28
DES MOINES IA 50320**

**ABCM CORPORATION
PO BOX 436
HAMPTON IA 50441-0436**

**Appeal Number: 04A-UI-00617-DWT
OC 12/14/03 R 02
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

ABCM Corporation (employer) appealed a representative's January 12, 2004 decision (reference 01) that concluded Malaika J. Luster (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 9, 2004. The claimant participated in the hearing with her witness, Pamela Miles, her mother. Beverly Foote, the human resource manager, and Karen Breeding appeared on the employer's behalf. During the hearing, Claimant's Exhibit A was offered and admitted as evidence. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 25, 2001. She worked part-time in the laundry department. Walter Green was the claimant's supervisor.

Prior to December 10, the employer talked to the claimant about her absences and for reporting to work late. Her job, however, was not in jeopardy as of December 9.

The last day the claimant worked was December 5, 2003. The claimant had the flu and obtained a doctor's note to excuse her from working on December 8 and 9. The employer received this doctor's statement, which indicated the claimant could return to work on December 10, 2003. On December 10, the claimant was still ill and unable to work. The claimant called the emergency room where she had been seen on December 8 and explained that she was still ill and unable to work. The doctor who saw the claimant on December 8 wrote another doctor's statement, indicating the claimant could not work from December 7 through 10, 2003. When Sandy Martin, a nurse, told the claimant what the statement said, the claimant asked that the statement clearly state the date she could return to work. Martin then wrote that the claimant could return to work on December 11, 2003. The claimant's mother picked up the statement because the claimant was too ill to leave her home. The employer received the doctor's statement on December 10.

The employer was suspicious about this doctor's statement because there were two distinct handwritings on the statement. On December 12, the claimant was still ill and went to the emergency room. After being released from the emergency room, the claimant stopped at work to show the employer how ill she was and to give the employer another doctor's excuse. The employer, however, told the claimant she was discharged because the employer concluded the doctor's statement the claimant's mother gave the employer on December 10 had been falsified.

Sometime after December 12, the employer called the emergency room and received information that no one would give a patient a later return to work date unless the patient was actually seen by someone in the emergency room. The employer did not talk to anyone who had talked to the claimant on December 10 or to the doctor who wrote the doctor's statement.

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 §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).

Based on the employer's conclusions, the employer established business reasons for discharging the claimant. The facts do not, however, support the employer's conclusions. Even though both the claimant and the employer presented hearsay information concerning the handwriting and information that appeared on the doctor's statement the employer received on December 10, the employer has the burden to establish the claimant committed work-connected misconduct. The employer did not meet this burden. The explanation the claimant gave about the questioned doctor's statement is reasonable and credible. The facts do not establish that the claimant falsified the doctor's statement or committed work-connected misconduct. Therefore, as of December 14, 2003, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 12, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of December 14, 2003, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b