

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BERNICE M BRITT
Claimant

APPEAL NO: 13A-UI-11187-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HGI LAKESIDE LLC
Employer

OC: 09/01/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 24, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing with her witness, Rhonda Britt, her aunt. Carol Eckels, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

In November 2006, the claimant started working for the employer as a full-time dishwasher. The claimant received a copy of the employer's attendance policy when she was hired and any time the policy was updated. The employer informs employees they will be discharged if they accumulate more than nine attendance points during a rolling calendar year. The employer has a no-fault attendance policy.

On March 25, 2013, the claimant received a final written warning for accumulating 11.5 attendance points. Since the employer had not followed its progressive disciplinary policy, the employer did not discharge the claimant, but warned her that her job was in jeopardy if she missed any more work before her accumulated points dropped to less than nine.

About a week before August 17, the claimant asked her supervisor for a day off on August 17. Her family had a picnic scheduled and she did not have a ride to work that day. Rhonda Britt gave the claimant a ride to and from work. The employer denied the claimant's request for time off on August 17. The claimant did not learn her request for time off on August 17 was denied until August 16.

The claimant called in sick on August 17, 2013. The employer gave her one attendance point for being absent on August 17 and one attendance point for failing to report to work after she had been denied time off that day.

Since two attendance points had rolled off since March 25, 2013, as of August 16 the claimant had 9.5 attendance points. The claimant reported to work as scheduled on August 18. On August 21, 2013, the employer discharged her because she violated the employer's attendance points by accumulating 11.5 points after she missed work on August 17, 2013.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharged the claimant 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's testimony that she was sick and unable to work on Saturday, August 17, is not credible when she was well enough to work on August 18. Rhonda Britt testified that she could have taken the claimant to work on August 17, but could not pick her up from work because of the scheduled family picnic. Since the claimant knew or should have known her job was in jeopardy after she received the March 25 written warning, her failure to make arrangements to get to work when her time off request was denied amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect. The claimant committed work-connected misconduct when she did not report to work as scheduled on August 17, 2013.

DECISION:

The representative's September 24, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 1, 2103. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs