

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORETTA D VICK-AXTELL**  
Claimant

**APPEAL NO: 08A-UI-10991-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**S & J TUBE INC**  
Employer

**OC: 01/27/08 R: 04  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

S & J Tube, Inc. (employer) appealed a representative's November 10, 2008 decision (reference 05) that concluded Loretta D. Vick-Axtell (claimant) was qualified to receive 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 December 9, 2008. The claimant participated in the hearing. Julie Belger, 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 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 9, 2008. The employer hired the claimant to work as a full-time production operator.

On July 3, 2008, the employer gave the claimant a verbal warning for missing too much work. When the employer hired the claimant, she told her immediate supervisor she had problems with migraine headaches. The claimant understood that as long as she tried to work as scheduled, even if she had to leave work early because of continuing problems with a migraine the employer would not count these absences against her. On June 13, the claimant notified the employer she was ill and unable to work. On June 19 the claimant left work early because of a family emergency. On June 27, the claimant left work 5.5 hours early because of a migraine.

On August 22, the claimant reported to work but left work six hours early because she was ill or had a migraine. On September 15, the employer gave the claimant a written warning for continued attendance problems. The written warning informed the claimant that she could not

have any unapproved absences until November 22. If the claimant had one more unapproved absence, the warning indicated the employer would discharge her.

On October 15, the claimant cut her hand at her home and went to the emergency room. The claimant was absent from work on October 15 and 16 because of her hand injury. The employer excused this absence because the claimant had a doctor's statement verifying she had been at the emergency room for this injury. On October 20, the claimant had a severe migraine headache and could not work. She properly notified the employer she was ill and unable to work. The employer considered this absence unexcused. As a result of the October 20 unapproved or unexcused absence, the employer discharged the claimant on October 21 for excessive absenteeism.

The claimant did not understand that the employer may have excused her absences when she could not work because of a migraine if she had presented the employer with a doctor's statement verifying she suffered from migraine headaches.

### **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 section 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).

The employer established business reasons for discharging the claimant. The claimant knew or should have known her job was in jeopardy after she received the September 15 written warning. On October 20, the claimant was unable to work because she was ill, suffered a migraine headache. The claimant did not intentionally fail to work as scheduled. Instead, she was unable to work and properly notified the employer of her inability to work. Based on the evidence presented during the hearing, the claimant did not commit work-connected misconduct. Therefore, as of October 19, 2008, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

**DECISION:**

The representative's November 10, 2008 decision (reference 05) is affirmed. The employer discharged the claimant for business reasons that do not amount to work-connected misconduct. As of October 19, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs