

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMSEN M LACINA
Claimant

APPEAL NO: 10A-UI-07068-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S GENEAL STORES
Employer

OC: 04/11/10
Claimant: Appellant (2/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's May 5, 2010 decision (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. A telephone hearing was held on July 15, 2010. The claimant participated in the hearing with her attorney, Jack Dusthimer. Marty Bernauer, the store manager, and Clifford Sisco 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 8, 2009. The claimant worked part time making donuts, lunches, and working on the cash register.

During the claimant's employment, she had medical issues that sometimes prevented her from working. The employer understood an absence for medical reasons when the claimant properly reported the absence before a shift. The employer gave the claimant a written warning in December 2009 for reporting to work late. On February 5, 2010, the employer gave the claimant a written warning and placed her on a 90-day probation because she did not timely notify the employer when she was unable to work as scheduled. The claimant's February 5 warning informed her that she had to be at work on time and could not have any call ins.

On April 11, the claimant reported to work 20 minutes late. She had medical issues before she came to work, and tried to call the store to notify the employer she would be late. No one answered the store phone. After Bernauer left the store that day, the claimant told the assistant manager she was ill and had to go home. The claimant had not said anything to Bernauer about not feeling well when she had reported to work.

On April 12 when Bernauer reviewed employees' timesheets, she discovered the claimant had been late for work ten out of the eleven days she had been scheduled to work the last two weeks. The employer gave employees a 5 to 10-minute leeway when reporting to work. However, when the claimant was more than ten minutes late for work, including over an hour, the employer considered this excessive tardiness. During the last pay period, there were times the claimant had forgotten to punch in when she came to work. The claimant did not understand the importance of correcting her timesheet when she had not punched in when she first reported to work.

When the claimant called in sick on April 12, the employer informed her she no longer had a job. The employer discharged the claimant because she was not a reliable or dependable employee and been late too many times after she had been placed on a 90-day probation. The employer concluded the claimant violated the employer's attendance policy by having more than two unscheduled tardies in a rolling calendar year.

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).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

After the claimant received the February 5 written warning and had been placed on 90-day probation, she should have known her job was in jeopardy if she did not report to on time and as scheduled. The facts do not indicate any significant problem until April 12.

When the claimant reported to work on April 11, she did not tell Bernauer she felt ill and this was the reason she was late for work. After Bernauer left work, the claimant told the assistant manager she was ill and had to go home. When Bernauer learned the claimant left work after she had left, she was not happy that the claimant had not talked to her on April 11.

Bernauer's frustrations grew after she discovered claimant's timecard indicated she had reported to work late 10 out of the 11 days she had been scheduled to work. Bernauer did not investigate the possibility that the claimant had not punched in for work when she first reported to work. This was not done because when the claimant called in on April 12 to report she was unable to work, the employer discharged her for excessive tardiness.

The employer established business reasons for discharging the claimant. The employer's policy states that during the first year of employment a combination of two or more occurrences in a calendar year of unscheduled absences or tardies is excessive. If the employer would have talked to the claimant about her March 28 through April 10 timecard, the employer may have

learned the claimant had not been late as many times as her timecard indicated. Also, the claimant's testimony that she tried to call the employer on April 11 to report she would be late because of medical issues she experienced is not disputed. As a result of the employer's relaxed attendance policy – reporting to work within 5 or 10 minutes of being scheduled, the claimant's timecard may not have accurately recorded the claimant had actually reported to work and the claimant's call to the employer on April 11 to report she would be late are all factors that indicate the claimant did not intentionally fail to report to work as scheduled or that she intentionally disregarded the employer's interests. As a result of the claimant's medical issues, she was not a dependable or reliable employee. But, the evidence does not establish that she committed work-connected misconduct. Therefore, as of April 11, 2010, the claimant is qualified to receive benefits

As a result of the claimant's medical issues and the potential exhibits the claimant sent in showing some of the dates of her hospitalization and appointments, the issue of the claimant's ability or available to work must be remanded to the Claims Section to investigate and make a written decision.

DECISION:

The representative's May 5, 2010 decision (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons. The claimant did not, however, commit work-connected misconduct. As of April 11, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirement. The employer's account is subject to charge. Since the claimant had medical issues when her employment ended and she provided dates of subsequent medical procedures, the issue of whether the claimant is able to and available for work as of April 11 or any week she has filed a claim for benefits is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs