

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

IVORY L HEITMEIER
Claimant

APPEAL NO: 12A-UI-11618-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 09/02/12

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Ivory L. Heitmeier (claimant) appealed a representative's September 25, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with West Liberty Foods, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 23, 2012. The claimant participated in the hearing. Alejandra Rojas appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on February 21, 2011. She worked full-time as a molder in the employer's Mount Pleasant, Iowa, packaging plant, working on a 4:00 p.m.-to-12:30 a.m. shift. Her last day of work was August 31, 2012. The employer discharged her on that date. The reason asserted for the discharge was excessive absenteeism.

The employer has a ten-point attendance policy. As of August 24, 2012, the claimant was at nine attendance points; she had been given a final warning to that effect on August 16. These nine points were due to five days of calling in sick (five points) and eight occurrences of leaving early (four points). Seven of the eight occurrences of leaving early were due to illness; the remaining early out was due to a fire at the claimant's apartment building.

The claimant was occasionally required to work overtime on Saturdays; in the summer 2012, she was usually working two or three Saturdays each month. Normally, the two supervisors

working Saturdays would post the lists of employees scheduled for Saturday overtime during the shift on Friday. The claimant did check the posted list on Friday, August 24; one list was posted after the first break at about 6:00 p.m., the other list was not posted until about 10:00 p.m. The claimant checked the postings periodically during her shift and again as she left at the end of the shift; she did not see her name posted on the list. However, on Monday she was informed that she had been scheduled to work on the Saturday. Since her failure to work on the Saturday was considered a no-call, no-show, it was assessed as three points, bringing the claimant to twelve points. As a result of the claimant exceeding the ten-point level, the employer discharged the claimant on August 31.

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 that was a material breach of the duties and obligations owed by the employee to the employer. 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. 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. 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. 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. 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. 871 IAC 24.32(7); *Cosper*, supra; *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007). Other than potentially the final absence, the claimant's prior occurrences were due to excusable reasons; the employer has not established excessive unexcused absences. Further, the employer has not established that the claimant had actual notice of her scheduled overtime on August 25, and the claimant did take sufficient reasonable actions to see if she was on the list to work overtime, to the end that this absence is also considered excused. The employer 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 September 25, 2012 decision (reference 01) 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

ld/kjw