

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAYLE L AVERY
Claimant

APPEAL NO: 13A-UI-01653-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STAPLES CONTRACT AND COMMERCIAL
Employer

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

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 7, 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. Cindy Sketch, the human resource manager, and Sue Wallin, the screen print manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in March 1996. She worked as a full-time utility employee.

During the last year of the claimant's employment, she had several absences because her child was ill, the claimant did not feel well or because of issues the claimant was dealing with as a result of her divorce. The claimant understood the employer could discharge an employee for excessive absenteeism if the employee accumulated 12 attendance points in a rolling calendar year. The claimant made sure she did not accumulate 12 attendance points. The employer started noticing that when attendance points rolled off, the claimant would again be absent for one or two days. As a result of this observation, on November 30, the employer put the claimant on probation for on-going attendance issues. The claimant had eight attendance points as of November 30. When the employer put the claimant on probation, she was not allowed to use her PTO time and was told she could not be absent from work. When the claimant received the November 30 warning and probation, she did not believe the employer's actions were fair, but she did her best to report to work on time.

The claimant did not want to lose her job. When the weather was bad, she left her home early so she could report to work on time at 6:45 a.m. Sometime between November 30 and

January 11, 2013, the claimant got to work early. Instead of going inside, the claimant stayed in her car and dozed off. She woke up after 6:45 a.m. The employer did not discharge her for this incident.

On January 11, 2013, the claimant again left her home early because of the weather and arrived at work around 6:00 a.m. She stayed in her car and fell asleep. She did not wake up until after 7:30 a.m. She walked into work at 7:39 a.m. The claimant was afraid she would lose her job for reporting to work late. She did not punch in.

The claimant talked to a co-worker who suggested she ask Wallin to sign off that the claimant came to work at 6:45 a.m. but had forgotten to punch in. The claimant knew the employer's policy did not allow employees to falsify their time cards. Even though the written policy indicates discipline up to and including termination can occur if an employee falsifies a time card, the employer discharges employees who falsify their time.

After Wallin came to work at 8:30 a.m., the claimant asked her to sign her time card. The claimant told her she had forgotten to punch in. The claimant wrote on her time card that she reported at 6:45 a.m. Wallin checked to see when the claimant entered the building and discovered she had not walked into the building until 7:39 a.m. After discovering the claimant tried to falsify the time she had reported to work, the employer discharged the claimant for falsifying her time.

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 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).

On January 11, 2013, the claimant understood her job was in jeopardy for attendance issues. The claimant was worried the employer would discharge her because she did not report to work until 7:39 a.m. on January 11, 2013. Instead of telling the truth, the claimant tried to get Wallin to sign her timecard that she had reported to work on time that day. The fact the claimant attempted to have Wallin sign her timecard to reflect that the claimant started working at 6:45 a.m., when the claimant had not entered the workplace until 7:39 a.m. amounts to an intentional and deliberate disregard of the standard of behavior the employer has a right to expect from an employee, especially a long-term employee. The employer discharged the claimant on January 11, 2013, for reasons constituting work-connected misconduct. As of January 13, 2013, the claimant is not qualified to receive benefits.

DECISION:

The representative's February 7, 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 January 13, 2013. 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/tll