

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOPE R BRADFORD
Claimant

APPEAL NO: 12A-UI-09257-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

METOKOTE CORPORATION
Employer

**OC: 07/01/12
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's July 26, 2012 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. Megan Rogers, 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 finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working full-time for the employer in November 2010. The employer's attendance policy informs employees that any time they receive four attendance points within 60 days; they will receive a corrective action for attendance issues. If an employee receives four corrective actions for attendance issues, the employee will be discharged for violating the employer's attendance policy for excessive absenteeism. The claimant understood the employer's attendance policy. The claimant received her first corrective action for attendance in late January 2011. The employer gave her a second corrective action for attendance on June 17, 2011. The claimant received her third corrective action on October 31, 2011. The claimant knew her job was in jeopardy if she was absent and received another four attendance points in 60 days. When the claimant was absent, she was usually ill and unable to work.

The claimant did not have any attendance problems again until June 1. The claimant called the employer on June 1 to report she might be late. The claimant's husband started a new job and they were trying to figure out how they could both get to work on time. The claimant also drove three other employees to work. The claimant and her three riders got to work on time. But, the claimant forgot her work boots at her home. She notified the employer that she had to go back home to get her boots and would be late for work.

After the claimant picked up her boots, she was speeding to get back to work. A law enforcement officer stopped her for speeding. Even though the claimant had taken care of a traffic fine in Kansas a couple of months earlier, she had not informed Iowa that her driver's license was no longer suspended. On June 1, in Iowa the claimant's driving record indicated her driver's license was still suspended. As a result of her driving record indicating she had a suspended license, the claimant was arrested and taken to jail. The claimant did not have an opportunity to contact the employer to let them know what had happened.

The claimant was in jail over the weekend and was not released until 4 p.m. on Monday, June 4. After she was released, she went to court to present information to a judge that her driver's license was not suspended. After the June 4 court proceeding, she did not have a ride to get to work.

On Tuesday, June 5, the claimant called to find out if she had a job after she missed two days of work. The employer's policy is a no-fault policy, which means the employer assessed the claimant two points each day the claimant was not at work. After reviewing her attendance record, the employer discharged the claimant because she had again accumulated four attendance points within 60 days. The employer discharged the claimant as of June 5, 2012.

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 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 understood her job was in jeopardy after she received her third corrective action for attendance on October 31, 2011. The claimant did not have attendance issues again until she was stopped for speeding on June 1 and her record incorrectly indicated her driver's license was suspended. Even though the claimant should not have been speeding to get back to work on June 1, she had previously resolved the problems with her driver's license in Kansas. If she

had not been arrested, she could have reported to work on June 1 and 4. Based on the evidence in this case, the claimant did not intentionally violate the employer's attendance policy.

The employer discharged the claimant for violating the employer's attendance policy. But, the claimant did not commit work-connected misconduct. Therefore, as of June 5, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's July 26, 2012 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons. The claimant did not commit work-connected misconduct. As of June 5, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw