

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY L NICHOLS
Claimant

APPEAL NO: 06A-UI-09253-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 08/20/06 R: 03
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kelly L. Nichols (claimant) appealed a representative's September 14, 2006 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Cargill Meat Solutions Corporation (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 2, 2006. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, 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 January 26, 2004. The claimant worked as a full-time floor janitor. The claimant understood that in accordance with the employer's written attendance policy, an employee could be discharged if the employee accumulated ten or more attendance points in a rolling calendar year.

The claimant did not work July 10 through 17 because her finger was infected and the employer did not have any light duty work for her to do. When the employer could not accommodate the claimant's work restrictions, the claimant's doctor excused the claimant from working these days. Upon returning to work in July, the employer told the claimant she had accumulated nine attendance points and her job was in jeopardy.

The claimant called in August 9 through 24 and notified the employer she was unable to work. The claimant was under a doctor's care during this time. The claimant knew her job was in jeopardy and planned to obtain the necessary FMLA paperwork when she returned to work so her doctor could complete the form. Under her contract the claimant understood that after she returned on August 24, she had 15 days to submit the paperwork for FMLA. When the claimant returned to work on August 24, the employer discharged her for excessive absenteeism. The employer gave the claimant points each day she had called in. The employer told the claimant she had accumulated 22.5 attendance points.

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).

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 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).

The employer may have had compelling business reasons for discharging the claimant after she exceeded the ten attendance points in a rolling calendar year. The claimant's most recent absences occurred because she was ill and were properly reported. The law specifically states that a claimant's inability to or incapacity to perform work does not constitute work-connected misconduct. The evidence does not establish that the claimant intentionally failed to work as scheduled. The claimant did not commit work-connected misconduct. As of August 20, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 14, 2006 decision (reference 02) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of August 20, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs