

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CONNIE L CARPENTER
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COUNCIL BLUFFS IA 51501

CON AGRA
COUNCIL BLUFFS
C/O TALX UC EXPRESS
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ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-00465-DWT
OC: 12/11/05 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Con Agra (employer) appealed a representative's January 5, 2006 decision (reference 01) that concluded Connie L. Carpenter (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 31, 2006. The claimant participated in the hearing with her witness, Maxine Riche. Julie Millard, a human resource generalist, 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 July 12, 1983. The claimant worked as a full-time production worker. Jim Allen was the claimant's supervisor the last six months of her employment. Another female supervisor started working in the claimant's department the last month of the claimant's employment.

When the claimant did not call or report to work on November 5, 6 and 7, 2005, the employer initially discharged her. After negotiating with the union, the employer agreed to return the claimant to work, but gave her a last-chance agreement. On November 22, 2005, the claimant signed the last-chance agreement, which stated she could be discharged if she did not follow all the employer's rules and regulations.

The claimant worked the week of November 27, 2005. The claimant was not on the schedule to work Saturday, December 3. When the claimant's supervisor asked her on Friday, December 2, if she would work the next day, the claimant indicated she could not. The claimant had personal errands and jobs to do on Saturday. The claimant's supervisor then walked away. The claimant had no understanding she could be discharged for not working on December 3 when she had not been scheduled to work this day. The claimant's supervisor did not indicate she would be violating her last-chance agreement if she did not work the next day.

On December 3, the claimant did not report to work. The employer discharged the claimant on December 6 for violating her last-chance agreement by failing to work and failing to notify the employer on December 3 she was unable to work as scheduled.

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).

Although the employer asserted the claimant was scheduled to work on December 3, the employer did not have a schedule, the claimant's supervisor did not participate in the hearing,

and the claimant's testimony that she was not scheduled to work on December 3 is credible. The claimant's testimony regarding the conversation she had with her supervisor on December 2 must be given more weight than the employer's reliance on unsupported hearsay information. Since the claimant did not understand she was scheduled to work or the employer required her to work on December 3, the claimant did not intentionally or substantially violate the last-chance agreement. The claimant did not commit work-connected misconduct. Therefore, as of December 11, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 5, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of December 11, 2005, 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.

dlw/pjs