

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

BANGELA J SMITH
2003 IRVINGTON RD
ALGONA IA 50511

WINNEBAGO INDUSTRIES
PO BOX 152
FOREST CITY IA 50436-0152

Appeal Number: 04A-UI-08718-DWT
OC: 07/04/04 R: 02
Claimant: Appellant (2)

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 are 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:

Bangela J. Smith (claimant) appealed a representative's August 9, 2004 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Winnebago Industries (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 September 7, 2004. The claimant participated in the hearing. Gary McCarthy, the personnel supervisor, appeared on the employer's behalf. During the hearing, Employer's Exhibit One was offered and admitted as 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:

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

FINDINGS OF FACT:

The claimant started working for the employer on January 19, 2004. The employer hired her to work as a full-time production assembler. The claimant received a copy of the employer's attendance policy. The employer's attendance policy informs employees that excessive absenteeism is defined as being unable to work more than 64 hours of excused time in a rolling 12-month time frame. (Employer's Exhibit One.)

The claimant made plans to go to Minneapolis to host and celebrate her godchild's second birthday on May 15. On Friday, May 14, the employer told employees they had to work mandatory overtime on May 15. After the claimant told her supervisor about her situation, the claimant understood that if she did not work overtime on May 15 the employer would discipline her. The claimant went to Minneapolis and did not work on May 15. On May 17, the employer gave the claimant a written warning for missing 100 hours of work since she began her employment and a two-day suspension. The employer warned the claimant that if she missed any more work until February 2005, the employer could discharge her.

On July 21, the claimant started driving to work. It was raining very hard and the claimant pulled off onto the side of the road until the rain let up. During this time, the claimant's car lights went out and she could not get her car started. She called her parents who were about 20 minutes from where she had pulled over. The claimant called the employer and left a message that she would be late for work because of car problems. The claimant had purchased her car within the last five months and had no indication there was any problem with it. On July 21, the car's alternator went out.

The claimant's parents came so the claimant was able to drive her mother's car to work. The claimant reported to work an hour and six minutes late. The employer discharged the claimant on July 21, 2004 for excessive absenteeism. On July 14, the claimant was not at work because she had gone to a chiropractor. The employer did not consider this absence because the claimant talked to her supervisor prior to July 14 and asked if she could use a vacation day for this appointment. Her supervisor mistakenly told her she could use a vacation day even though she did not have any vacation time to use.

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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The claimant knew her job was in jeopardy on May 17 when she received a written warning and a two-day suspension for continuous attendance problems. The employer warned the claimant on May 17 that if she had any more attendance issues before February 2005, the employer could discharge her.

On July 21 when the claimant was on her way to work, her alternator went out during a rainstorm. The claimant notified the employer that she would be late for work because of unexpected car problems and contacted her parents so she could still get to work. The claimant's parents drove to the location that the claimant's car had stopped and the claimant then drove her mother's car to work. The claimant was, however, an hour and six minutes late for work. The employer discharged the claimant on July 21 for violating the employer's attendance policy and being excessively absent from work.

Based on the employer's attendance policy, the employer established compelling reasons for discharging the claimant. The facts show that after the May 17 suspension, the claimant did not intentionally or substantially disregard the employer's interests. Instead, her attendance improved. The claimant had no control or advance notice that she needed a new alternator or that she would experience any problems getting to work on July 21. When the claimant's alternator went out, she acted responsibly and notified the employer that she would be late for work and contacted her parents so she could use one of their vehicles to get to work. Under the facts of this case, the claimant did not commit a current act of work-connected misconduct.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's August 9, 2004 decision (reference 03) is reversed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of July 4, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

dlw/kjf