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

BELINDA L VEGA
318 – 3RD NW
MASON CITY IA 50401

WINNEBAGO INDUSTRIES
PO BOX 152
FOREST CITY IA 50436 0152

Appeal Number: 05A-UI-00339-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 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:

Belinda L. Vega (claimant) appealed a representative's January 4, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment 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 January 25, 2005. The claimant participated in the hearing. David Midtgaard, the plant manager, and Lorna Zrolstik, the personnel recruiter, 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 September 9, 2002. She worked as a full-time production assembler. The employer's written policy defines a tardy as reporting to work late anytime within an hour of when the shift started. If an employee punched in at 8:01 a.m. and the shift started at 8:00 a.m., the employer would count the employee tardy. The employer's policy defines excessive tardiness, as an employee having nine tardies within a rolling calendar year. The employer discharges an employee when an employee accumulates nine tardies.

The claimant had an understanding with her supervisor, Francis Frost, that if she called in one shift prior to her scheduled shift, she could use vacation time to cover for time she was late for work instead of being counted tardy. Even with this arrangement, the claimant was late for work to the extent the employer started its progressive disciplinary process. When an employee has an attendance problem, the employer does not grant the employee vacation time even when the employee requests vacation time one shift prior the shift the employee is scheduled to work.

The claimant understood her job was in jeopardy when the employer started giving her written warnings for reporting to work late. On October 13, 2004, the claimant was 48 minutes late for work. The employer gave her a final written warning and a two-day suspension because she had accumulated eight tardies within a rolling calendar year.

After the claimant got off work on December 14, she was unable to get into her car because the door handles were frozen and broke. Employees at the employer's guard shack made arrangements for the claimant to get home and to ride the next day with another employee who lived in Mason City. The claimant was scheduled to work again at 3:30 p.m. on December 14, 2004. At 8:30 a.m., the claimant called the employer and talked to Midtgaard. The claimant asked for vacation time because she might be late for work. Even though the claimant made the vacation request within the proper timeframe, Midtgaard denied her vacation time because of the claimant's attendance problems. The claimant had vacation time to cover the time she might be late for work. The claimant came to work with another employee but was nine minutes late for work when she punched in. The employer discharged the claimant on December 14, 2004, because this was the ninth time she was late for work in a rolling calendar year.

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 employer followed its attendance policy and discharged the claimant when she had been late for work nine times within a rolling calendar year. The employer established compelling business reasons for discharging the claimant.

On December 14, the claimant did not have her car and had to rely on another employee to get to work on time. The claimant made attempts to cover herself if she was unable to get to work on time on December 14 by properly asking for vacation time. The claimant's transportation problem was unexpected and beyond the claimant's control. She took reasonable steps to have her car repaired in a timely manner. She also rode to work with another employee who lived in Mason City. Under the facts of this case, the claimant did not intentionally or substantially disregard the employer's interests. The claimant not only took reasonable steps to get to work on time, she also notified the employer that she might be late for work. The claimant did not commit a current act of work-connected misconduct. As of December 12, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 4, 2005 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of December 12, 2004, 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/sc