

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTINA M STRAYER
Claimant

APPEAL NO. 08A-UI-02887-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 02/24/08 R: 03
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (employer) appealed a representative's March 14, 2008 decision (reference 01) that concluded Kristina M. Strayer (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 April 16, 2008. The claimant participated in the hearing. Lauri Elliott, the assistant 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 enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

Has the claimant been overpaid any benefits?

FINDINGS OF FACT:

The claimant started working for the employer on October 12, 2006. She worked as a full-time production employee. During the course of her employment, the claimant had properly notified the employer when she was ill and unable to work. The claimant understood she was to call the phone number with an automated answering machine before her scheduled shift when she was unable to work as scheduled. Sometime when the claimant had been unable to work a number of days, she either called the employer the first day she was unable to work or the day she went to a doctor.

The claimant did not work February 11 through 14, 2008. The claimant did not work these days because she stayed home with her daughter who was ill. The doctor suspected the claimant's child had whooping cough. On February 15, the claimant waited for the results of her child's blood test to confirm whether her child had whooping cough.

On February 15, 2008, the claimant reported to work. Since the test results were not yet back, the employer's nurse told the claimant she could not be excused from work. On February 15, the claimant's supervisor talked to the claimant about her absences and the necessity of getting her paperwork in for a leave under the Family Medical Leave Act. The claimant commented that she did not know if she would be at work the following week because if her daughter's test was positive for whooping cough, the claimant would be unable to work for five days while she received treatment for whooping cough. After work on Friday, February 15, the claimant learned the test was positive for whooping cough. As a result the claimant had to undergo treatment for whooping cough and was restricted from working for five days or until Thursday, February 21.

The claimant was scheduled to work on February 18. The claimant was extremely nauseous this day. She had been experiencing complications with her pregnancy. The claimant's mother took the claimant to the doctor on February 18. The claimant's doctor restricted her from working until Wednesday, February 20. The claimant took the doctor's statement to the employer's nurse on Tuesday, February 19. The claimant then learned she needed to complete the FMLA paperwork for herself and her daughter on separate forms, not together. The claimant did not properly notify her supervisor by calling before her shift on Monday or Tuesday.

The claimant did not feel well on Wednesday. Again, the claimant did not properly notify her supervisor that she was unable to work. Sometime during Wednesday, the claimant went to the employer's nurse and handed in paperwork for FMLA. She then went back to her doctor. The claimant received another doctor's statement indicating she could be off work until Monday, February 25, because of complications with her pregnancy. The claimant did not call to report she was unable to work February 21 and 22. The claimant did not work February 18 through 22, 2008.

The claimant reported to work on February 25, 2008. When the claimant had not properly reported her absences, February 18 through 22, the employer considered her to have five no-call/no-show incidents. The employer's attendance policy informs employees that if they have three consecutive days where they do not call or report to work, the employer considers the employee to have self-terminated her employment. The employer did not have a record of any doctor's statements for the claimant's absences the week of February 18, 2008.

On February 25, the employer told the claimant her employment ended on February 22 when the employer concluded she had voluntarily quit her employment. The claimant established a claim for benefits during the week of February 24, 2008. She filed claims for the weeks ending March 1 through April 5, 2008. She received her maximum weekly benefits amount of \$262.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts establish the employer initiated the employment separation as a result of the claimant's absences the week of February 18, 2008. When the claimant returned to work on February 25, she demonstrated that she had no intention of quitting.

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).

Even if the claimant told her supervisor on February 15 that she may not be at work the next week if her child's test results were positive, the employer had no idea if the test results were positive or negative. On February 18, the claimant asserted she was too ill to work or contact the employer because she was vomiting. While the claimant may have gone to a doctor on February 18, the employer did not have any doctor's note the claimant asserted she gave the employer's nurse the next day. Even though the claimant testified that she brought her doctor's note to the employer on February 19, she did not notify her supervisor she was unable to work. The claimant did not call the automated system to inform her supervisor she was unable to work and had a doctor's excuse restricting her from working prior to her scheduled shift. The claimant also testified that sometime between February 15 and 22; she talked to a nurse named Heather. Heather, however, has not worked for the employer since February 7, 2008. The claimant also asserted she worked eight hours on February 22. Her timecard and the employer's payroll system, however, indicate the claimant did not work at all on February 22. Since the claimant's general assertions are not supported by any other factual information and were contrary to the employer's records, the claimant's testimony is not credible. Therefore, the administrative law judge concludes the claimant did not call or report to work on February 22, 2008.

When the claimant's supervisor talked to her about her attendance points on February 15, the claimant knew or should have known her job was potentially in jeopardy if she did not provide the necessary paperwork for some of her absences to be covered under FMLA. If the claimant was so sick that her mother had to take her to the doctor on February 18, her failure to properly notify the employer on Monday is understandable. However, her failure to properly notify her supervisor on February 19, 20, 21, and 22 amounts to an intentional and substantial disregard of the employer's interests. If the claimant was well enough to go to the employer's office and talk to a nurse about her FMLA paperwork on February 19, she could have called her supervisor before her shift on the days she was ill and unable to work. The claimant did not properly contact the employer, her supervisor, even though in the past she had. Based on the credible facts in this case, the claimant failed to properly notify the employer she was ill and unable to work. The claimant's conduct reflects an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for reasons constituting work-connected misconduct. As of February 24, 2008, the claimant is not qualified to receive benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending March 1 through April 5, 2008. The claimant has been overpaid \$1,572.00 in benefits for these weeks.

DECISION:

The representative's March 14, 2008 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 24, 2008. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant has been overpaid and must repay a total of \$1,572.00 in benefits she received for the weeks ending March 1 through April 5, 2008.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css