

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHANDAL CLEMONS**

Claimant

**APPEAL NO: 10A-UI-08080-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S GENERAL STORES**

Employer

**OC: 05/09/10**

**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's May 28, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation occurred for nondisqualifying reasons. A telephone hearing was held on July 21, 2010. The claimant participated in the hearing. Randy Reed, the store 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.

**ISSUE:**

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?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 8, 2009. She worked as a part-time cashier/cook, 20 to 30 hours a week. The employer's attendance policy requires employees to notify the employer if they are going to be late for work or unable to work a scheduled shift.

During her employment, the claimant received written warnings for failing to report to work as scheduled and for failing to notify the employer she would be late or unable to work. On March 4, the claimant received a written warning after she was two hours late for work. The claimant was late because she overslept. On April 26, the claimant was scheduled to work at 7:00 a.m. but she did not read the schedule correctly and did not realize she was scheduled to work that day. The employer gave the claimant her second written warning for again failing to work as scheduled. This warning informed the claimant that if she failed to work as scheduled again and did not timely notify the employer she was unable to work as scheduled, she would be discharged.

After the claimant received the April 26 warning or second written warning, she purchased an alarm clock. She understood her job was in jeopardy. Previously she only had an alarm on her cell phone that she used to get up.

On May 8, 2010, the claimant was scheduled to work at 3:00 a.m. She did not hear her three alarms and overslept. As soon as the claimant woke up at 6:00 a.m., she called the employer. The employer discharged the claimant on May 8 because of continued attendance issues.

#### **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).

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 employer established justifiable business reasons for discharging the claimant. After the claimant received her second written warning she understood her job was in jeopardy if she was absent or late for work again. The claimant took reasonable steps to make sure she reported to work on time. Although the claimant had three alarm clocks, she overslept on May 8, 2010. As soon as she woke up, she called the employer. The claimant's actions do not establish that she intentionally or even substantially disregarded the employer's interests on May 8, 2010. The evidence does not establish that the claimant committed work-connected misconduct. As of May 9, 2010, the claimant is qualified to receive benefits.

**DECISION:**

The representative's May 28, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of May 9, 2010, the claimant is qualified to receive benefits provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css