

**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**

**DAVETA D WILLIAMS  
1327 E 17<sup>TH</sup> ST  
DES MOINES IA 50316**

**QWEST CORPORATION  
c/o EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000**

**Appeal Number: 04A-UI-02589-DWT  
OC 02/08/04 R 02  
Claimant: Respondent (5)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Qwest Corporation (employer) appealed a representative's March 5, 2004 decision (reference 04) that concluded Daveta D. Williams (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer had not filed a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 30, 2004. The claimant participated in the hearing. Luci Hengen, a representative with Employer's Unity, Inc., appeared on the employer's behalf with Kevin Brennan, the customer relation's manager, as the employer's witness.

The representative's decision indicated the employer had not filed a timely protest even though the representative acknowledged the employer filed a protest on February 19 and the deadline was February 20, 2004. The representative clearly made a mistake. The employer filed a timely protest.

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 or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 8, 2003. The employer hired the claimant to work as a full-time customer service relation's specialist. The employer's attendance policy informs employees an employee has unsatisfactory attendance if within the first three months of employment an employee has one attendance occurrence; an employee has unsatisfactory attendance when an employee has two attendance occurrences within the first three to six months of employment; or an employee has unsatisfactory attendance when an employee has three attendance occurrences within the first six to nine months of employment.

On October 15 2003, the claimant received an attendance occurrence. On October 30, the claimant received a written warning that her attendance was unsatisfactory and she could be disciplined or discharged if she had another occurrence before December 18, 2003. The claimant had another absence on November 5, 2003. The employer gave the claimant a warning of dismissal on November 20, 2003. In the warning, the employer informed the claimant that if she had another attendance occurrence before March 8, 2003, she would be discharged. On January 2, 2004, the employer gave the claimant another warning of dismissal because she had reported to overtime work late. The employer told the claimant and she understood she would be discharged if she missed anymore work that was not excused or if she was late for work.

Prior to January 13, the claimant had asked for three paid days off from work. The employer gave her one of the three days off, January 14. On January 13, 2003, the claimant notified the employer that her grandfather had passed away and she was going to take bereavement leave. The claimant did not report to work on January 13, 14 or 15. The claimant knew her job was in jeopardy and reported back to work on January 16 even though her grandfather's funeral was that day. When she reported to work, the employer asked for an obituary to verify her bereavement leave. The claimant did not have an obituary notice since she had not attended the funeral, but indicated she would get one.

The claimant's mother sent the claimant the obituary she had received at the funeral. The claimant had the obituary in her car when her car was towed away on Monday, January 19. On January 19, the claimant informed the employer about her situation with her car and the obituary. The employer gave the claimant until Friday, January 23, to provide the obituary notice. The claimant went to the towing company in an attempt to retrieve some of her personal property from her car. The towing company did not allow her to remove anything. The employer tried to find the claimant's grandfather's obituary by going on-line, but was not successful.

After the claimant's car was towed, she took a cab to work each day. The employer knew the claimant relied on cabs to get to work. On January 26, 2004, the claimant started calling for a cab two hours before she was scheduled to work because the roads were not good after it had snowed. When the cab did not come because of adverse road conditions, the claimant called

the employer and asked if she could take one of her paid days off. The employer did not allow the claimant to have January 26 off from work. The claimant then indicated her cab was late and would not be at work. The claimant knew she would be discharged if she reported to work late or missed anymore work.

On January 29, 2004, the claimant went to work to talk to her supervisor. The claimant told her supervisor she knew she had been discharged. The employer confirmed the claimant's belief. The employer discharged her because she exceeded the employer's permissible attendance occurrences.

#### 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).

As of January 26, 2004, the claimant had attendance occurrences on October 15, November 15, and January 13, 15 and 26. Pursuant to the employer's attendance policy, the claimant violated the number of times a new employee could be absent from work. Based on the employer's attendance policy, the employer had compelling business reasons to discharge the claimant.

Even though the claimant did not present a copy of her grandfather's obituary at the hearing, her testimony is credible. A preponderance of the evidence indicates she was in Chicago on January 13, 14 and 15 because her grandfather passed away. On January 26, the claimant knew her job was in jeopardy and tried to get the day off when she realized she would be late for work because a cab did not pick her up in time. The facts show the claimant notified the employer when she was unable to work as scheduled. The claimant's most recent absences

were beyond her control. The facts indicate her absences on January 13, 14 and 15 would be excused. The claimant made reasonable attempts to report to work as scheduled on January 26 and then tried to retain her job by asking for a day off when she knew she would be late. The claimant did not intentionally fail to work as scheduled on January 26. Even though the employer discharged the claimant for business reasons, the claimant did not commit work-connected misconduct. As of February 8, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 5, 2004 decision (reference 04) is modified, but the modification has no legal consequence. The employer filed a timely protest. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 8, 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/kjf