

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

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QWEST CORPORATION
c/o TALX EMPLOYERS UNITY INC
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ARVADA CO 80006-9000

HEARITY LAW FIRM
PO BOX 51
WATERLOO IA 50704-0051

Appeal Number: 06O-UI-05181-DWT
OC: 02/18/06 R: 03
Claimant: Respondent (1)

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:

Qwest Corporation (employer) appealed a representative's March 10, 2006 decision (reference 01) that concluded Sharon R. Creighton (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. A hearing was held on April 25, 2006. Based on evidence presented by the employer, an administrative law judge disqualified the claimant from receiving benefits. The claimant appealed the decision to the Employment Appeal Board. The Employment Appeal Board remanded the decision to the Appeals Section for a new hearing.

After hearing notices were again mailed to the parties' last-known addresses of record, a telephone hearing was held on July 3, 2006. The claimant participated in the hearing with her attorney, Robert Hearity. Marcie Schneider, a representative with TALX, appeared on the employer's behalf. Caryl Gilstrap, a call center supervisor and the claimant's supervisor,

appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two and Claimant's Exhibit A were 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 June 15, 1995. Gilstrap became the claimant's supervisor in 2006. The employer's written policy informs employees they can be discharged for excessive absenteeism.

The employer started giving the claimant written warnings about her attendance on March 31, 2004. The claimant's continued absences resulted in the employer giving her numerous warnings of dismissal for attendance issues until June 29, 2005. The employer reviewed the claimant's attendance with her on September 9, 2005. In September 2005, the claimant understood her job was still in jeopardy if she had any further unexcused absences. The claimant did not have an attendance issue until January 17, 2006.

The claimant's primary physician referred the claimant to another physician for a medical procedure, which the claimant had performed on January 17, 2006. The claimant properly informed the employer about the surgery and her inability to work. The claimant was not released to return to work until February 1, 2006. The employer's disability department contacted the claimant to ask for medical documentation verifying the need for her absence from January 17 through 31, 2006.

When the claimant returned to work on February 1, 2006, the employer reissued a warning informing the claimant that her attendance was unacceptable. On February 6, the employer's disability representative left the claimant a message that her disability request had been denied because she had not provided the requested medical documentation. When the claimant talked to the disability representative on February 7, she indicated she would make arrangements to get the requested documentation from her doctor. The claimant contacted her primary physician and the physician who performed the procedure. The claimant understood these doctors faxed the requested information to the employer's disability department. (Employer Exhibits One and Two.)

On February 8, the claimant requested time off to attend a funeral in Texas. The claimant went to Texas on February 10 for the funeral. On February 10, the claimant's husband signed for a certified letter from the employer. The employer assumed the claimant had not gone to the funeral as she had requested. The claimant attended the funeral in Texas and returned to work on February 13 as she had previously arranged. (Claimant Exhibit A.)

On February 21, the disability department received a fax from a doctor on the claimant's behalf. Disability personnel concluded the faxed information did not support the claimant's request for time off January 17 through 31, 2006. (Employer Exhibit One.) As a result, the claimant was not paid for time off in January. The employer then discharged the claimant for violating the

employer's attendance policy by being excessively absent from work the last 23 months of her employment.

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 established compelling business reasons for discharging the claimant. Pursuant to the employer's policy, the claimant was excessively absent from work and violated the employer's policy. The facts, however, establish that after the claimant received the September 9, 2005 attendance review, she was not absent from work until she had a surgical procedure on January 17, 2006. The claimant properly reported she was unable to work as of January 17, 2006. Even though the employer's disability department did not grant the claimant's request for disability for January 17 through 31, 2006, this denial does not mean the claimant was able to work during this time and/or that she intentionally failed to work January 17 through 31, 2006.

Since no one from the employer's disability department testified at the hearing, the employer did not know what medical information the claimant provided in February 2006 to the employer. A preponderance of the evidence indicates the claimant was unable to work because of a medical procedure that was performed on January 17. The claimant's physician did not release her to return to work until February 1, 2006, when the claimant went back to work. The employer incorrectly assumed the claimant did not go to a funeral in Texas because her husband signed for a certified letter on February 10. The facts establish the claimant went to Texas for a funeral as she had requested.

The claimant was absent a great deal in January 2006, but she properly reported her inability to work in January 2006. The claimant did not intentionally fail to work as scheduled. After the claimant had a medical procedure, she was unable to work until February 1, 2006. The claimant did not commit work-connected misconduct. As of February 19, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 10, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of February 19, 2006, 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/cs