

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINA M HEAD
Claimant

APPEAL NO. 06A-UI-10547-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CNH AMERICA LLC
Employer

**OC: 12/18/05 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 19, 2006, reference 05, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 15, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Tony Wallace. Paul Nitzel participated in the hearing on behalf of the employer. Exhibits 1 and A through D were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production laborer from October 27, 2005, to September 27, 2006. She was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled. The claimant had several periods of absences due to personal illness during which the claimant properly reported her absences and provided medical documentation establishing her inability to work. She received a verbal warning for excessive absenteeism on March 30, 2006. She was suspended on April 28 for excessive absenteeism and was warned again on July 18 regarding her attendance.

The claimant was absent from work on an approved medical leave of absence due to her medical problems from September 8 through 26. On September 27, she returned to work with the statement from her doctor excusing her from working from September 8 through 26 and releasing her to return to work as of September 27.

On September 27, 2006, the employer discharged the claimant for excessive absenteeism because she had missed 53 out of 152 workdays since completing her probation.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. The claimant's absences were due to legitimate medical reasons supported by doctors' excuses and she properly notified the employer regarding her absences.

DECISION:

The unemployment insurance decision dated October 19, 2006, reference 05, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/cs