

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEFANIE L WILLIS
Claimant

APPEAL NO. 09A-UI-18078-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GILLETTE CO
Employer

**Original Claim: 06/28/09
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Gillette Company filed an appeal from a representative's decision dated November 23, 2009, reference 01, which held that no disqualification would be imposed regarding Stefanie Willis' separation from employment. After due notice was issued, a hearing was held by telephone on January 12, 2010. Ms. Willis participated personally. The employer participated by Becky Hasler, Employee Relations Manager. Exhibits 1 through 14 were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Willis was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Willis was employed by Gillette Company from March 9, 1998 until November 2, 2009. She was last employed full-time as a "cross-action" technician. She was discharged because she failed to follow the employer's payroll procedures.

The employer's payroll system pays an individual for all scheduled hours unless the employee goes into the system and makes exceptions. If an employee does not make changes to code time away from scheduled work, the system defaults to the regularly scheduled number of hours and pays the individual as if he or she worked all scheduled hours. Employees are required to review their paychecks for accuracy. Any changes must be made before the end of the next pay period.

Ms. Willis worked only a portion of the day on September 19 and September 25, 2009. She intended to take the time off without pay and to have it covered by FMLA. However, she did not make any exceptions in the system and, therefore, received full, regular pay for both dates. By failing to enter any exceptions, she received \$161.20 in pay that she was not entitled to receive. The matter came to light when she was discussing her FMLA usage with the company nurse during the week of October 5. The nurse notified management of the issue in an email sent on October 12.

The issue was first discussed with Ms. Willis on October 22. She told the employer she thought she had made the necessary changes. She was suspended on the date and notified of her discharge on November 2. The above matter was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Willis was discharged because she failed to account for time off and failed to notify the employer that she had been overpaid as a result of that failure. The administrative law judge does not believe she deliberately and intentionally failed to correct her time records for the purpose of receiving pay she knew she was not entitled to receive.

Ms. Willis was negligent in failing to keep track of her time off and to make the appropriate exceptions in the time and attendance records. Negligence constitutes disqualifying misconduct only if it is so recurrent that it manifests a substantial disregard of the employer's standards. 871 IAC 24.32(1). Ms. Willis' discharge was predicated on three instances of negligence, the failure to make exceptions for September 19 and September 25, and the failure to note that her paycheck covering those two days represented full pay without any exceptions.

Ms. Willis worked for Gillette for over 11 years. At the time of discharge, there were no other instances of payroll violations or other acts of negligence during her tenure. Because of this factor, she had not received any warnings that would have alerted her to the fact that she needed to use more care in maintaining her attendance records. After considering all of the circumstances, the administrative law judge concludes that Ms. Willis' negligence was not so recurrent that it represented a substantial disregard of the employer's standards. The employer's right to discharge her is not at issue. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated November 23, 2009, reference 01, is hereby affirmed. Ms. Willis was discharged by Gillette Company, but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw