

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

SANDRA L COOPER  
117 PAULAIRE CT  
BURLINGTON IA 52601

ALFAGOMMA AMERICA INC  
3520 WEST AVE  
BURLINGTON IA 52601

Appeal Number: 06A-UI-04361-SWT  
OC: 03/19/06 R: 04  
Claimant: Appellant (2)

**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 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 12, 2006, reference 01, that concluded the claimant was discharged for work-connected misconduct. A telephone hearing was held on May 8, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Matt Brakeville participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as an assembler from October 13, 2003, to March 14, 2006. The claimant 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 and were subject to discharge for excessive absenteeism or tardiness.

The claimant received a written warning for excessive absenteeism and tardiness on February 24, 2005. She received a written warning and three-day suspension for excessive absenteeism and tardiness on May 5, 2006.

The claimant received a final warning and five-day suspension on February 11, 2006, after he was tardy on January 4 (one minute), January 10 (one second), January 13 (one minute), January 25 (two seconds), and February 9 (seven seconds) and was absent on January 6, January 19 and 20, January 26, February 2 and 3, and February 10. The claimant's absences were all for legitimate medical reasons, were properly reported, and were covered by doctor's excuses for January 19 and 20 and February 2 and 3.

The claimant fell backward down the stairs at home on March 9 and was injured. The claimant reported to work as scheduled that day. After she reported to her supervisor what had happened, the claimant was allowed to leave work to see a doctor. She was treated by a physician and excused from working on March 9 and 10. She was prescribed a muscle relaxant and pain medication for her injury. Despite the excuse, the claimant reported to work on March 10, turned in the medical excuse, and worked her shift that day.

The employer had voluntarily overtime work available on March 11. The claimant's supervisor asked the claimant on March 10 if she wanted to volunteer to work on March 11. The claimant declined because she needed to recuperate over the weekend from her injury. For some reason, the claimant's name was placed on the signup sheet that she had volunteered for overtime work.

When the claimant did not report to work on March 11, the employer considered her absent without notice. She was discharged for violating her final warning as a result of her absence on March 11.

#### 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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.

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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony regarding declining work on

March 11 and the reasons why was very believable. The claimant demonstrated that she desired to work and did not want to be absent from work when she reported to work after falling down a flight of stairs and reporting to work the next day even though her doctor had excused her from working. It is unlikely that she follow that by being absent from work without notice the next day when she had always called in when she missed work before.

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.

**DECISION:**

The unemployment insurance decision dated April 12, 2006, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/pjs