

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY R BENAVIDES
Claimant

APPEAL NO: 06A-UI-08961-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINNEBAGO INDUSTRIES
Employer

**OC: 07/02/06 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Tammy R. Benavides (claimant) appealed a representative's August 30, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Winnebago Industries (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known address of record, a telephone hearing was held on September 21, 2006. The claimant participated in the hearing. Cathy Florea, the production supervisor, and Gary McCarthy appeared on the employer's behalf. During the hearing, Employer Exhibits One through Three 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 January 6, 1997. The claimant worked as a full time advanced assembler/fabricator. Florea supervised the claimant. The employer's attendance policy informs employees progressive discipline starts when an employee has six more attendance issues in a year. When employees have six attendance occurrences, the employer gives employees a verbal warning. For the seventh attendance occurrence, the employee receives a written warning. The employee receives two-day suspension upon accumulating eight attendance occurrences. If within a year, the employee has nine attendance occurrences, the employer discharges the employee.

The claimant received a verbal warning for accumulating six attendance occurrences on June 30, 2006. (Employer Exhibit Three.) The claimant's previous attendance occurrences occurred because she reported to work late. On July 10, the employer gave the claimant a written warning for signing in at the guard shack at 6:52 a.m. (Employer Exhibit Two.) The claimant disputed the reasons the employer gave her this warning because she had been at

work at 6:47 a.m. The problem occurred when she had to sign in some tools and the guards had to look up what she had taken because the claimant forgot her receipt. By the time the guards found the receipt, it was approximately 6:52 a.m.

On July 20, the claimant overslept and was five minutes late for work. In accordance with the employer's progressive discipline, the claimant received a two-day suspension. The claimant's written warning indicated that if there was not immediate improvement, further disciplinary action would be taken. (Employer Exhibit One.)

On August 7, 2006, the claimant, before she left for work, could not find her car keys. She notified the employer about her dilemma and indicated she would get to work as soon as she could find a ride. The claimant has a young child who takes and hides everything. The child has hidden her car keys before. In an attempt to resolve this problem, the claimant had another set of car keys made. The morning of August 7, the claimant had not found her second set of keys when she called the employer. The claimant ultimately found a set of car keys and got to work at 7:30 a.m. The claimant wanted the employer to use some of her vacation time to cover the time she was not at work. Florea would not do this. The employer considered the August 7 incident as a tardy and discharged the claimant for excessive tardiness.

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 section 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).

Pursuant to the employer's policy, the employer established compelling business reasons for discharging the claimant. The facts do not, however, establish that the claimant intentionally disregarded the employer's interests. On July 10, there is a dispute as to when the claimant initially checked in for work. Even though the employer indicated a review of the guard's check in list would be reviewed, the evidence does not establish that this was done. On August 7, the fact the claimant could not find her car keys right away was something beyond her control. The claimant knew her young child took objects and hid them. As a result, she had an extra set of car keys made. Unfortunately, the claimant could not initially find the duplicate set of keys right away on August 7. The employer could have allowed the claimant to use some of her vacation time to cover the time she did not work on August 7, but this has not been pre-approved. On August 7, the claimant took reasonable steps to report to work on time. She did not intentionally

or substantially disregard the employer's interests. Even though the claimant was late nine times in a year, she did not commit work-connected misconduct on August 7. As of August 6, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 30, 2006 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of August 6, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. .

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs