

Order, another telephone hearing was held on October 24, 2005. The claimant participated in the hearing. Ike Rocha interpreted the hearing. Jeremy Cook testified on the employer's behalf. Based on the evidence, the arguments of the parties from both hearings, 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 2, 1998. The claimant worked full-time as a production worker. The employer's attendance policy informs employees they can be discharged if they accumulate ten attendance points or they can enter into an attendance contract. The attendance contract informs employees that if they miss a day of work or are late for work within 90 days of signing the contract, the employer will discharge the employee.

From June 7, 2004, to March 25, 2005, the claimant accumulated ten attendance points. The claimant called in and notified the employer that either she or a family member was sick on July 6, August 16, September 20 and 21, October 25, and November 15, 2004. Even though the employer excused these absences, each absence counted as an attendance occurrence. The claimant was ill and unable to work March 7 through 14, 2005. The March 7 through 14 absence was excused, but the employer still considered it as one attendance occurrence. On June 7, 2004, the claimant was 13 minutes late for work and this was considered unexcused. On March 23 and 24, 2005, the claimant did not contact the employer or report to work. The claimant thought she had another job and did not report to work. When the claimant did not get a new job, she returned to work.

On March 28, 2005, the claimant signed an attendance contract because she had accumulated ten attendance points. The claimant understood that if she missed one day of work or was late for work within the next 90 days, the employer would discharge her. On May 13, 2005, the claimant was late for work. The employer discharged the claimant on May 17, 2005, for violating the provisions of the March 28, 2005 attendance contract.

The claimant was either 6 or 25 minutes late for work on May 13. The claimant was late because her babysitter did not answer her door right away and the two started talking. The claimant may have gotten to work at 6:00 a.m., but was not dressed and ready to go to work until after the start of her 6:00 a.m. shift.

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. 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 facts establish the claimant knew her job was in jeopardy on March 28, 2005, when she signed an attendance contract that informed her she would be discharged if she missed any work or was late for work within the next 90 days. On May 13, the claimant was late for work. Although the parties disagreed as to how late the claimant reported to work, they both agreed she was late for work.

While the administrative judge sympathizes with the claimant's situation, the facts do not reveal what if anything the claimant did to make sure she was not late or absent from work after March 28, 2005. The claimant was late for work on May 13, for an unexcused reason. The claimant knew she would be discharged if she violated the provision of the March 28, 2005 attendance contract. When the claimant failed to report to work as scheduled on May 13, the employer discharged her for violating the terms of the "last-chance" attendance contract. The employer discharged the claimant for work-connected misconduct. As of May 22, 2005, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 14, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 22, 2005. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/s