

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE R HECKMAN
Claimant

APPEAL NO: 11A-UI-03506-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MONROE CARE CENTER INC
Employer

**OC: 01/02/11
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's March 14, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Shelley Bear, the administrator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in July 6, 2010. She worked part time, 20 hours a week, as a bed maker. The employer's attendance policy informs employees that when an employee has seven attendance incidents in a rolling calendar year, the employer gives a verbal warning. At eight attendance incidents, an employee receives a written warning. The employee is suspended after accumulating nine attendance incidents. If an employee accumulates ten attendance incidents in a rolling calendar year, the employer discharges the employee.

The employer suspended the claimant three days for failing to call or report to work on September 27. This was the claimant's first written warning. Even though the claimant was ill and did not have a phone to call the employer, the employer emphasized the importance of notifying the employer four hours before a scheduled shift when the claimant was ill and unable to work.

The claimant was unable to work on December 8 and 9. She went to the hospital and had a doctor's note verifying she had sought medical treatment and was unable to work. When the employer gave her a written warning for this absence, the claimant learned that if she were absent again, she would be discharged. The claimant was unable to work December 23

through 27. She properly notified the employer she was ill and unable to work. The claimant had the flu.

The employer discharged the claimant on December 29, 2010 for excessive absenteeism.

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. 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).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer established justifiable business reasons for discharging the claimant. The employer warned the claimant in early December the next time she was absent she would be discharged. Even though the employer had justifiable reasons to discharge the claimant, the claimant did not intentionally fail to report to work as scheduled December 23 through 27. Instead she was ill and unable to work. The claimant established a reasonable excuse for not working as scheduled December 23 through 27. She did not commit work-connected misconduct. Therefore, as of January 2, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's March 14, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but these reasons do not constitute work-connected misconduct. As of January 2, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css