

**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**

**JENNIE M POTTER
20401 APACHE TRAIL
BERNARD IA 52032**

**MARTIN LUTHER HOME CORPORATION
LUTHER MANOR
3131 HILLCREST RD
DUBUQUE IA 52001**

**Appeal Number: 04A-UI-04459-DWT
OC 03/21/04 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, 4th 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 are 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Jennie M. Potter (claimant) appealed a representative's April 8, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Luther Manor (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 12, 2004. The claimant participated in the hearing. Troy Smith, the human resource director, appeared on the employer's behalf. 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 March 19, 2002. She worked part-time during the school year and full time during the summer as a utility aide in housekeeping. The employer's policy informs employees they will be discharged if they accumulate 12 attendance points in a rolling calendar year.

On August 25, 2003, the claimant received a three-day suspension for having 10 attendance points. The employer told the claimant that as a result of her medical appointments, which resulted in some of the attendance points assessed against her, the employer would allow the claimant to use vacation time when she was absent or she could work a weekend day before or after a day she was unable to work for medical reasons. The employer understood the claimant agreed to trade a missed weekday for a weekend day so she would not accrue any more attendance points.

The claimant was absent from work on November 6. She did not make up the day of work and received an attendance point. In November, the claimant was assessed a half of an attendance point for being late or leaving work on two days. On January 31, 2004, the claimant left work early and received a quarter of an attendance point. The claimant actually had accumulated 12¼ attendance points as of January 31. The employer did not usually review an employee's points if the employee was late or left work early. The employer just counted points when an employee was absent and received an attendance point.

Sometime prior to March 12, 2004, the claimant asked her supervisor if she could have March 12 off from work. The claimant wanted to attend a family reunion in Omaha. The claimant's supervisor told the claimant she could not have the day off from work because she did not have any vacation time to use. When the claimant asked if she could make up the time she was scheduled to work on March 12 on another day, the claimant understood her supervisor would allow her to do this. On March 10, the claimant left a message for her supervisor that she would make up the time she missed on March 12 on March 25 and/or 26. The employer did not tell the claimant whether this was approved or not.

The employer discharged the claimant on March 19, 2004. The employer discharged her because she had accumulated 13¼ attendance points in a year when she failed to make up the March 12 absence either the weekend prior to or just subsequent to March 12. The employer had no knowledge that the claimant's supervisor told the claimant she could make up the time or that the claimant intended to make up the time on March 25 and/or 26.

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).

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 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 claimant knew or should have known her job was in jeopardy on August 25 when the employer gave her a three-day suspension and the opportunity to make up time she missed for medical appointments. Even though her job was in jeopardy, the claimant did not make up time she missed on November 6 and she received another attendance point, her 11th point in a rolling calendar year. When the claimant was absent for personal reasons on March 12, she received another attendance point, which put the claimant over the number the employer allowed employees.

If the claimant had done nothing to protect her continued employment, her failure to work as scheduled on March 12 would constitute work-connected misconduct. In this case, the claimant understood she could make up the time she was absent for a family reunion late in the month. Since the March 12 absence was not the result of a medical appointment, the claimant's supervisor could have decided the claimant could not make up time. Instead, the claimant understood her supervisor allowed the claimant to make up the time she missed on March 12 so she would not receive another attendance point. The claimant told her supervisor she would make up the time on March 25 and/or 26.

The facts establish the employer had business reasons for discharging the claimant. The employer did not realize the claimant made arrangements to make up the time she did not work as scheduled on March 25 and/or 26. Since the employer could not refute the claimant's assertion she had permission to make up the time, the claimant's testimony must be given more weight than the employer's speculation as to what the claimant's supervisor told the claimant. Since the claimant intended to make up the time and understood she had approval to do so, she did not commit work-connected misconduct on March 12, 2004. Therefore, as of March 21, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 8, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of March 21, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf