

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RUBY L CRISP**  
Claimant

**APPEAL NO: 14A-UI-02886-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PILOT TRAVEL CENTERS LLC**  
Employer

**OC: 02/09/14**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's March 6, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation was for nondisqualifying reasons. The claimant participated at the April 14 hearing. Sam Ray, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on November 7, 2013. The employer hired the claimant to work as a full-time coffee host. The claimant's job was to sell coffee eight hours a day.

During her employment, the claimant was absent a few days when she had the flu. When the claimant was absent, she gave the employer a doctor's statement to verify she was ill and unable to work. On January 20, 2014, the claimant was unable to work because her car was being repaired. The claimant lives about 30 miles from work. The claimant reported to work on January 21. On January 21, Ray talked to the claimant about performance issues because coffee sales were down. Ray did not give the claimant a written warning, but the claimant felt her job was in jeopardy after Ray talked to her.

On January 21, after work, the claimant was in a motor vehicle accident. Her husband called the employer the evening of January 21 and on 22 to let the employer know that the claimant was unable to work after her accident. The claimant went to the hospital on January 21. She was released from the hospital on January 22. As a result of the accident, the claimant's treating physician told the claimant she could not work for five days.

The claimant called her work place on January 22 to let the employer know she could not work for five days. The claimant called to talk to Ray, but instead talked to Patty, a manager. The claimant's husband also called the employer at various times to report that the claimant could not work. On January 24, the claimant called the employer to talk to Ray. He was not at work when she called. On January 27, the claimant called work early in the morning to talk to Ray. Even though he was usually at work at the time the claimant called, he was not on January 27. The claimant then called the employer's human resource and learned Ray had ended her employment.

The claimant established a claim for benefits during the week of February 9, 2014. She filed claims for the weeks ending February 5 through April 5. She received her maximum weekly benefit amount of \$155 for each week. Both the claimant and employer participated at the fact-finding interview.

The employer is not one of the claimant's base period employers.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. Even though the employer asserted the claimant quit by failing to call or report to work for three days, the evidence does not support this assertion. Instead, the evidence indicates the employer ended the claimant's employment.

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 defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. Iowa Admin. Code r. 871-24.32(1)(a).

The facts show Ray knew the claimant or her husband called between January 22 and 27, but the calls were made at times Ray was not working. After her accident, the claimant's treating physician restricted her from working for five days. Even though the claimant did not provide a copy of this work restriction, a five-day work restriction would not be unreasonable after an accident.

The employer emphasized that the claimant was still in her 90-day probation when her employment ended. This suggests the employer was not satisfied with the claimant's work performance, which Ray talked to the claimant about on January 21, 2014. The employer discharged the claimant for justifiable business reasons, but unsatisfactory performance does not rise to the level of work-connected misconduct. Also, the fact that the claimant was unable to work January 22 through 27 does not constitute work-connected misconduct since the claimant was restricted from working after being involved in an accident. As of February 9, 2014, the claimant is qualified to receive benefits.

During the claimant's current benefit year, the employer's account will not be charged because the employer is not one of the claimant's base period employers.

**DECISION:**

The representative's March 6, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of February 9, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account will not be charged during the claimant's current benefit year.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs