

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY D FORNEY

Claimant

APPEAL NO: 07A-UI-00103-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

**OC: 11/26/06 R: 03
Claimant: Respondent (1/R)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (employer) appealed a representative's December 18, 2006 decision (reference 01) that concluded Wendy D. Forney (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 30, 2007. The claimant participated in the hearing. Katie Diercks, an assistant human resource manager, appeared on the employer's behalf. After the hearing, the employer faxed a copy of the letter sent to the claimant by certified mail and a copy of the front and back side of the envelope. These documents are collectively identified as Employer Exhibit One and have been admitted as evidence. The claimant faxed a copy of two doctor's statements verifying she was restricted from working by her doctor from November 8 through November 17, 2006. This document has been identified as Claimant Exhibit A and has been 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 May 16, 2006. The claimant worked as a full-time production employee. The employer's policy informs employees that after an employee has completed a probationary period, an employee can be discharged if the employee accumulates ten attendance points. Also, the employer considers an employee to have voluntarily quit employment if the employee does not call or report to work for three consecutive days.

As of October 30, 2006, the claimant had 8.5 attendance points. The employer's nurse sent the claimant home early on October 30 because the claimant was sick and vomiting. On October 31, the claimant notified the employer she was ill and unable to work. The claimant saw her physician, Dr. Butler. Dr. Butler diagnosed that the claimant had pneumonia and had

low iron. Dr. Butler restricted the claimant from working. The claimant gave the employer a copy of the doctor's statement indicating she could not work at least until November 8, 2006.

The claimant's doctor also gave her statements restricting her from working until November 17, 2006. (Claimant Exhibit A.) The claimant did not provide a copy of these statements to the employer in November or December. The claimant understood her doctor did not release her to return to work until December 4 or 5, 2006.

The first time the claimant did not call to report she was unable to work as scheduled was November 22 and 23. The claimant received information from co-workers that she no longer had a job with the employer. On November 24, the claimant called and told the employer she had doctor's statements verifying she was ill and unable to work. The employer representative who talked to the claimant informed the claimant she had already been terminated and the doctor's statements would not do her any good.

The claimant established a claim for unemployment insurance benefits during the week of November 26, 2006. On November 27, the employer mailed a certified letter to the claimant asking her for medical documentation to verify she was ill and unable to work. The employer's letter was returned because the claimant did not receive it. (Employer Exhibit One.) When the employer did not receive any medical documentation substantiating the claimant's medical need to be off work, the employer officially terminated the claimant's employment on December 13, 2006.

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).

On November 24, the employer informed the claimant she was discharged. Therefore, there was no reason for the claimant to submit additional doctor's statements she had in her possession. From October 31 through November 21, the claimant properly contacted the employer to report she was ill and unable to work. Since the claimant had not worked since October 30, the employer established business reasons for discharging her. The claimant did not, however, intentionally fail to work as scheduled. She did not work because she was ill and unable to work. The claimant did not commit work-connected misconduct.

Even though the employer ultimately asserted the claimant was not discharged until December 13 because she failed to timely provide the employer with doctor's statements verifying she had been ill and unable to work, the claimant did not receive the employer's November 27, 2006 letter. A preponderance of the credible evidence establishes that as of November 26, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements.

The claimant asserted her physician did not release her to work until December 4 or 5. Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code section 96.4-3. This means that for the week ending December 2, the claimant was not able to or available for work. Since the claimant's physician initially restricted her from working and the claimant did not submit a doctor's statement verifying she was released to work as of December 4 or 5, the issues of when the claimant is able to and available for work in December 2006 and if she has been overpaid any benefits is remanded to the Claims Section to investigate and make a written decision.

During the hearing, the employer's testimony changed as to why and when the claimant's employment ended. Even though the employer's representative was honest, it appeared she had not reviewed her information prior to the hearing. As a result of her changing testimony, the claimant's version of events must be given more weight than the employer's testimony.

DECISION:

The representative's December 18, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of November 26, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. Since the claimant's doctor restricted her from working, but the claimant did not provide a copy of her doctor's release to return to work in early December, the issues of whether and when the claimant was able to and available for work, and whether she has been overpaid any unemployment insurance benefits is remanded to the Claims Section to investigate and issue a written decision. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs