IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ELVA S COON
Claimant

INTERFACE SEALING SOLUTIONS INC
Employer

APPEAL NO. 08A-UI-07461-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/27/08 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 18, 2008, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on September 2, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Sherry Beadle. John Crupi participated in the hearing on behalf of the employer. Exhibits A and One were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production employee from May 1, 2006, to July 16, 2008. The claimant had received a verbal warning on May 2, 2008 for unexcused absences for missing work on April 23 when she was unable to work after she had dermatology surgery on her back. Her doctor had excused her from working, but the employer did not accept the excuse because the claimant had contacted her doctor by telephone to obtain the excuse rather than reporting to the office. She received a written warning on May 5, 2008, for missing work on April 25. She had requested a personal day for April 25, but later discovered she only had four hours of personal leave available and was considered unexcused for the remaining four hours.

On July 16, 2008, the claimant left work early due to health reasons. She went to the doctor and was excused from working due to strep throat. She supplied a medical excuse to the employer to cover her absences.

During the evening on July 16, 2008, the claimant received a phone call that her adult daughter who was six-months pregnant was being transported to a hospital in Des Moines due to serious pregnancy complications. The doctors were concerned about her daughter losing the baby and her daughter's medical condition as well. They advised the claimant that she should stay with her daughter. The next day, the claimant called and notified the human resources director,

John Crupi, about her daughter's pregnancy complications and that she was not going to be at work. She asked how she could cover her absences so that they would be excused. Crupi said the only way they could be covered would be under the Family and Medical Leave Act (FMLA) and that he would send her the paperwork for the FMLA leave.

The claimant called her supervisor on July 21 to inform him that she would not be in that week due to her daughter's medical emergency. Crupi had called the U.S. Department of Labor and was informed that the leave would not be covered by FMLA, since the claimant's daughter was an adult who did not live in the claimant's household. Crupi communicated this information to the claimant. The claimant said she had not had the chance to submit the paperwork yet and her doctor believed the absences would be covered under FMLA.

The claimant had unused vacation hours to cover her absences through the middle of her shift on July 22. All the absences afterward were considered unexcused and exceeded the employer's limit for unexcused absences. On July 23, 2008, the claimant's supervisor contacted the union representative and said Crupi had informed him that that the claimant had been terminated. The union representative requested the termination papers and the supervisor said he would get them from Crupi. The union representative then informed the claimant about what the supervisor has said.

The doctor completed the FMLA certification on July 23 and certified that it was necessary for the claimant to be absent to care for her daughter who required assistance for basic medical needs, personal needs, and psychological comfort. The claimant immediately faxed the document to the employer. Crupi received the request on July 24 and denied it was not covered under FMLA based on the DOL interpretation. On July 25 Crupi set up a conference call with the DOL representative and the claimant in which the DOL representative indicated that the leave was not covered under FMLA. The claimant understood that her employment was terminated and did not call in the following week.

The employer suspended and then discharged the claimant because her unexcused absences during the week ending July 25 put her at the termination stage under the employer's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) states that excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. Ultimately, she was discharged for being absent from work during the week ending July 25, 2008. The employer was properly notified about these absences. She was absent due to a medical emergency involving her daughter for which a doctor certified it was necessary for the claimant to be absent to care for her daughter who required assistance for basic medical needs, personal needs, and psychological comfort. This shows reasonable grounds for her absences. The fact that the absences were not covered by FMLA gave the employer the right to discharge her, but does not establish disqualifying misconduct under the unemployment insurance law. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated August 18, 2008, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw