

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE S MOCK**

Claimant

**APPEAL NO. 11A-UI-06983-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANTAGE SALES & MARKETING LLC**

Employer

**OC: 04/24/11**

**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's May 12, 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 non-disqualifying reasons. The claimant participated in the hearing. Tom Kuiper, a TALX representative, appeared on the employer's behalf. Elizabeth Wood testified 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 reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working again for the employer in August 2008. The claimant worked as a part-time retail sales merchandiser. The last day the claimant worked for the employer was March 31, 2011.

On March 31, the claimant talked to a human resource representative and requested a leave of absence for an undetermined time after learning her mother-in-law was terminally ill and needed someone to help her in California. After she talked to a human resource representative, she understood she could have time off until May 14 but needed to complete some paperwork. The claimant completed the necessary paperwork for a leave of absence and flew to California. The claimant's leave of absence request was sent to a third-party company who grants or denies requests for a leave of absence.

The third-party company denied the claimant's request for leave of absence because her mother-in-law was not considered an immediate family member. The employer learned about the denial on April 6 and sent the claimant a letter that day. The letter informed her that her leave of absence had been denied and she needed to call or report to work by April 11 or she would not have a job. Even though the claimant's husband signed for the letter, he did not open the letter.

The claimant did not know her leave request had been denied until her supervisor called and talked to her on April 8. When her supervisor indicated she was to return to work by Monday, April 11, the claimant explained the situation with her mother-in-law and that she could return to work in two weeks when her husband came to California to help his mother. The claimant understood her supervisor would talk to management about the claimant returning to work on April 25 and get back to the claimant. The claimant flew back to Iowa on April 22. When she returned home, she read the letters the employer sent her, including the letter informing her she no longer had a job because she had not returned to work or called the Leave of Absence Department by April 11, 2011.

#### **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. The evidence does not establish the claimant quit her employment. Instead, the employer initiated the employment separation after a third-party company denied the claimant's request for a leave of absence.

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).

When the claimant went to California in early April, she understood she was on a leave of absence until May 14. She did not know her leave of absence request had been denied until her immediate supervisor called and talked to her on Friday, April 8. The claimant's husband could not go to California until April 23, and the claimant explained this to her supervisor. The claimant understood her supervisor would talk to management and get back to the claimant about returning to work after April 11. The claimant was busy taking care of her mother-in-law and did not think about calling her supervisor while she was in California the following two weeks.

The employer ended the claimant's employment because she did not report to work by April 11. Wood's department did not know the claimant had talked to her supervisor on April 8. Based on the facts in this case, the employer established business reasons for discharging the claimant. The claimant did not, however, commit work-connected misconduct. As of April 24, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's May 12, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of April 24, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/kjw