IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DARCY J LONG
Claimant

WINEGARD COMPANY
Employer

APPEAL NO. 09A-UI-02384-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 12/14/08
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Darcy J. Long (claimant) appealed a representative's February 3, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Winegard Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 10, 2009. The claimant participated in the hearing. Lisa Harroff of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Carl Ingwersen. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 5, 2006. She worked full time as a pad printer in the employer's Burlington, Iowa, satellite dish manufacturing facility. Her last day of work was December 5, 2008. The employer discharged her on that date. The reason asserted for the discharge was excessive absenteeism.

The claimant had received four written warnings previously in 2008. She had been absent four times for which she did not provide medical documentation, although illness may have been the reason for those occurrences. She had also been tardy on several occasions due to transportation problems, although the employer did not take disciplinary action against her for those occurrences, indicating that it would not since the claimant had come in for the remainder of those days. The final warning she had been given on September 9 indicated she faced discharge if she had a further unexcused absence before January 4, 2009.

On December 4 the claimant called in at about 6:00 a.m., her scheduled start time, indicating that she would be late because she had gotten stuck in an alley and her tire was shredded. She had to wait until about 10:30 a.m. for a tow truck to come, and then was waiting for repair work

on her car to be completed. She spoke to Mr. Ingwersen between 11:00 a.m. and 11:30 a.m. and advised him of her situation. He emphasized the need for her to come in as soon as possible, and indicated he needed to speak with her when she came in.

The claimant assumed that he was intending to discharge her, and had something of a nervous breakdown. As a result, when her car was ready between 12:00 p.m. and 12:30 p.m., she did not report for work for the remainder of the day, which would have been until 4:00 p.m. Neither did she call back to the employer to report she was not coming in for the remainder of the day or why. The next day, the claimant reported for work as usual; she did not say anything as to why she had not come in the remainder of the prior day or indicate she intended to go to her doctor to get an excuse to cover her afternoon absence until she was informed she was being discharged for her failure to come in.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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 to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Excessive unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional. Cosper, supra. The claimant's final absence on the afternoon of December 4 was not due to a properly reported to illness or other reasonable grounds, nor was an acceptable reason provided to excuse the failure to properly report the absence. The claimant had previously been warned that future absences could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's February 3, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of December 5, 2008. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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