IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LAURIE K GOTTSHALK
719 – 3RD ST
BELMOND IA 50421

IOWA MOLD TOOLING CO INC
PO BOX 189
GARNER IA 50438-0189

Appeal Number: 06A-UI-03612-DWT
OC: 02/26/06 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Iowa Mold Tooling Company, Inc. (employer) appealed a representative's March 23, 2006 decision (reference 01) that concluded Laurie K. Gottshalk (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 18, 2006. The claimant participated in the hearing. Rhonda Krause, the human resource manager, appeared on the employer's behalf. 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 September 20, 2005. The claimant worked as a full-time assembler on the night shift, 3:30 p.m. to 2:00 a.m. The employer's attendance policy informs employees they will be discharged for excessive absenteeism. When an employee's attendance falls to one or zero, the employer can discharge the employee.

During her employment, the claimant properly notified the employer when she was ill and unable to work on October 13, November 10, and December 13, 2005; and January 9, and February 2 and 9, 2006. Each time the claimant was absent for a reported illness, her attendance points were reduced by three points. The claimant received an attendance notice on February 6, 2006, which informed her that as of February 2, she had six attendance points remaining. After the claimant called in sick on February 9, she had three attendance points left.

On February 23, 2006, the claimant rode to work with another employee. The claimant was in a hurry when she left her home and forgot her steel-toed boots. The claimant realized she had forgotten her boots, but did not want her co-worker to be late for work and did not ask him to turn around so she could get her boots. After the claimant reported to work, she informed the employer that she did not have her boots. The employer sent the claimant home to get her boots. The claimant went home and returned to work around 4:30 p.m. because she lives 25 miles from work. The claimant's supervisor had the discretion to dock her one or two attendance points. The claimant's supervisor docked her two attendance points. Since the claimant only had one point left, the employer discharged her pursuant to the employer's attendance policy.

There was one other time the claimant forgot her boots, but she drove that day and went back home to get them before she reported to work. The claimant was not late for work that day.

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 § 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).

Pursuant to the employer's attendance policy, the employer had justifiable business reasons for discharging the claimant. The claimant knew her job was in jeopardy when she received the attendance notice on February 13 informing her that she only had three attendance points left.

The facts show a majority of the claimant's points occurred as a result of the claimant calling in sick. On February 23, the claimant was late for work because she inadvertently forgot to pick up her steel-toed boots when her ride picked her up for work. Even though the employer did not believe the claimant was ill as many times as she called in, the employer did not require her to bring a doctor's statement verifying she was ill. There was no evidence presented indicating the claimant was not ill as she reported. The facts do not establish that the claimant made a habit of forgetting her steel-toed shoes or that she was frequently late for work. While the claimant was not a dependable or reliable employee, because of repeated illnesses, the evidence does not establish that the claimant intentionally and substantially disregarded the employer's interests by failing to report to work as scheduled. The claimant did not commit work-connected misconduct. As of February 26, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 23, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of February 26, 2006, the clamant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjw