

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA S SAMS**  
Claimant

**APPEAL NO: 13A-UI-02044-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BUNN-O-MATIC CORPORATION**  
Employer

**OC: 01/20/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Bunn-O-Matic Corporation (employer) appealed a representative's February 19, 2013 decision (reference 01) that concluded Linda S. Sams (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 19, 2013. The claimant participated in the hearing. Jenny Robinson appeared on the employer's behalf. One other witness, SueAnn Johnston, was available on behalf of the employer but did not testify. 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?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on March 28, 2011. She worked full time as an assembler. Her last day of work was January 15, 2013. The employer discharged her on January 24, 2013. The reason asserted for the discharge was her attendance, specifically having three days of unexcused absence.

The claimant has a medical condition known as fibromyalgia. The employer gave the claimant a written warning for attendance on January 27, 2012 and a suspension for attendance on August 24, 2012. The employer did not provide any details with regard the absences which lead to the discipline; the claimant asserted that all of the absences were as a result of her medical condition.

On or about January 15, 2013 the claimant was informed that she was going to be changed to a different work assignment. The position at which the claimant had previously been working

allowed her to sit as needed; the new position would be a standing job. The claimant was concerned that given her medical condition she would not be able to handle the work of the new assignment.

The claimant was absent on January 16 through January 18, which absences were covered by FMLA (Family Medical Leave) for her condition. She also called in absences for January 21 through January 24 because she was still negotiating with the employer as far as being able to return to work at her prior work assignment rather than the assignment that required standing. The employer determined that these last three days of absence were unexcused, and on January 24 discharged the claimant.

### **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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

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 which 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 which 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).

The reason cited by the employer for discharging the claimant is her three-day absence from January 21 through January 23. Excessive unexcused absences can constitute misconduct, however, in order to establish the necessary element of intent, the final incident must have occurred despite the claimant's knowledge that the occurrence could result in the loss of her job. *Cosper*, supra; *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984). The claimant's absence while she attempted to negotiate the change in the work assignment due to her medical condition was in good faith and not intentional misconduct. Further, the employer has not established that the claimant had excessive unexcused absences; other than the final absence of three days, the prior absences which were due to the claimant's medical condition are treated as excused. *Cosper*, supra. The employer has not met its burden to show disqualifying misconduct.

*Cosper, supra.* Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's February 19, 2013 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/css