

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLA A LAROSE
Claimant

APPEAL NO: 09A-UI-04048-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS DAIRY INC
Employer

OC: 11/23/08

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Carla A. Larose (claimant) appealed a representative's March 9, 2009 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Wells Dairy, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 8, 2009. The claimant participated in the hearing. Josh Burrows of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Joel Hazeman. 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 May 31, 2005. She worked full time as a packing worker in the employer's Le Mars, Iowa ice cream plant. Her normal schedule was 3:00 a.m. to 1:00 p.m., Monday through Friday. Her last day of work was February 14, 2009. The employer discharged her as of February 16, 2009. The reason for the discharge was excessive absenteeism.

The claimant was on notice of the employer's attendance policy which provides for discharge after an employee reaches nine attendance points. Prior to February 16 the claimant had 8.5 points. One point was due to personal illness, one point was due to the illness of an infant child, and the remainder were due to absences and tardies caused by oversleeping, weather, traffic stops, or other personal issues. She had been given a final warning on December 18, 2008 which informed her she was at eight points. She was tardy on February 11, 2009 and was aware she was at 8.5 points.

On February 16 the claimant's boyfriend came home late and had been drinking; the claimant therefore determined she could not leave her child with him for him to take to the daytime childcare as was normally her practice. As a result, she called in an absence to the employer,

knowing this would bring her to 9.5 points which would result in discharge. She confirmed with another supervisor on February 17 that the employer deemed her to be at 9.5 points and that she no longer had a job.

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 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).

Excessive unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). Absences due to issues that are of purely personal responsibility including child care are not excusable. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984); Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The claimant's final absence was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future absences could result in termination. Higgins, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's March 9, 2009 decision (reference 02) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 16, 2009. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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