

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRY L MIECZNIKOWSKI
Claimant

APPEAL NO: 13A-UI-10118-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GEARHEAD ENTERPRISES INC
Employer

OC: 07/28/13
Claimant: Respondent (1)

Iowa Code § 96.5(2)a -Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 21, 2013 determination (reference 02) that held her qualified to receive benefits and the employer's account subject to charge because her employment separation was for nondisqualifying reasons. The claimant participated in the hearing. Kent Williams, the owner, appeared 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 work-connected misconduct?

FINDINGS OF FACT:

The claimant has worked at various times for the employer. Most recently the claimant started working for the employer in March or April 2013. The employer hired the claimant to work about 20 hours a week to do clerical work during the employer's busy season, the summer months. The claimant typically worked Tuesday and Thursday. She usually did not work on Friday.

On Monday, June 24, the claimant worked but had to leave work early. The claimant left work early on June 24 because she had to unexpectedly help her daughter move to another residence. The claimant believed she sent a text to C., a co-worker and the shipping or office manager, on June 25. The claimant's text indicated she would not be at work because she was still helping her daughter move. The claimant was next scheduled to work on Thursday, June 27. C. again received a text that the claimant was unable to work because she had a conflict with her other job. The employer understood the claimant did not personally send this text. Instead, the claimant's husband sent the text. While the employer tries to be very lenient, the employer wants employees to personally call when they are unable to work as scheduled.

Williams sent the claimant a letter on June 28 reminding her that the employer's policy required employees to call when they were unable to work. Also, if an employee did not call or report to work for three days, their employment ends. The letter was mailed to the claimant's old address. The claimant did not receive the June 28 letter.

The week of July 1, the claimant called and talked to C. The claimant learned the employer did not need her then because the employer hired some temporary employees to do the claimant's part time job. The claimant was not told that other employees just took over work she had been doing. No temporary employees had been hired. The claimant was also told the employer would call her when the employer needed her to work.

The claimant did not establish a claim for benefits until the week of July 28, 2013, or not until her other job ended. The claimant has filed weekly claims since July 28, 2013, but has not received any benefits.

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 has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a.

Since C. was the employee the claimant sent text messages to and C. did not participate at the hearing, the claimant's testimony must be given more weight than the employer's testimony that was based on what C. told him. The evidence indicates the claimant called and talked to C. the week of July 1. At that time she learned she was not needed and would be called when the employer had work for her to do. Since the claimant contacted the employer the week of July 1, the evidence does not establish that the claimant quit her employment. Instead, the claimant stopped working because the employer's representative informed her she was not needed and would be contacted when the employer needed her again. For unemployment insurance purposes, the employer ended the claimant's employment by discharging her or laying her off from work.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The facts indicate the claimant did not personally call the employer's office as the employer requires employees to do when they were unable to work as scheduled. Instead, she or her husband sent a co-worker text messages informing the employer she was unable to work as scheduled. The claimant did not follow the correct procedure to notify the employer she was unable to work, but the employer received information that she would not be at work on June 25 and 27. Since the employer had previously accommodated the claimant when her other job conflicted with her working for the employer, the fact the claimant did not work on June 27 does not disqualify the claimant from receiving benefits. The claimant may have used poor judgment when she did not personally call the employer on June 25 and 27, but as a result of the employer's leniency, her decision to send the employer text messages instead of calling does not rise to the level of work-connected misconduct either. As of July 28, 2013, the claimant is not disqualified from receiving benefits. If the claimant receives benefits during her current benefit year, the employer's account is subject to charge.

DECISION:

The representative's August 21, 2013 determination (reference 02) is affirmed. The claimant did not voluntarily quit her employment. Instead, the employer ended the claimant's employment on June 28, 2013, for reasons that do not rise to the level of work-connected misconduct. As of July 28, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge if the claimant receives benefits during her current benefit year.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs