

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARGO S PARKER
Claimant

APPEAL NO. 08A-UI-08151-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VICTOR MANUFACTURING
Employer

**OC: 08/10/08 R: 03
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Victor Manufacturing, filed an appeal from a decision dated September 2, 2008, reference 01. The decision allowed benefits to the claimant, Margo Parker. After due notice was issued, a hearing was held by telephone conference call on September 29, 2008. The claimant participated on her own behalf. The employer participated by Human Resources Manager Bob Clemons.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Margo Parker was employed by Victor Manufacturing from September 3, 1985 until July 2, 2008 as a full-time machine operator. She received a copy of the attendance and progressive disciplinary policies. Absenteeism is assessed by percentage of time missed, with three percent being unacceptable. Ms. Parker received a verbal warning, a written warning, and a three-day suspension for absenteeism from August 16, 2007 through March 4, 2008. The absences were due to illness and were properly reported, but all absences count against the employees.

The final absences occurred on March 12, 13, 14, and 15, 2008, and all were properly reported. She provided a doctor's excuse for all the days missed and the employer received it. Ms. Parker went on a disability leave from March 31 through July 1, 2008, and returned to work July 2, 2008. She was discharged on her return-to-work day for the absences in March 2008.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant was discharged for absenteeism. The employer acknowledged all the absences were properly reported and, in addition, the final absences were covered by a doctor's statement. A properly reported illness cannot be considered misconduct as it is not volitional. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In addition, 871 IAC 24.32(8) requires there to be a current, final act of misconduct that precipitates the discharge before a disqualification may be imposed. The final absences were not only properly reported and excused, but occurred nearly four months before the discharge. Under these circumstances, disqualification may not be imposed.

DECISION:

The representative's decision of September 2, 2008, reference 01, is affirmed. Margo Parker is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw