

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELSEY A HARPER
Claimant

APPEAL NO: 13A-UI-11396-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LANCE PRIVATE BRANDS LLC
Employer

**OC: 09/15/13
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 4, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Melissa Stiffler, a human resource generalist, 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 employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in March 2012. She worked as a full time sanitation technician. When the claimant started working, she received a copy of the employer's no-fault attendance policy. The policy informs employees that during a rolling calendar year if they accumulate more than eight attendance points, they will be discharged. The employer's policy is a no-fault policy.

The employer gave the claimant her final written warning on May 22, 2013. The claimant received the May 22 final warning after she was five minutes late for work on May 14. The claimant ran out of gas about a block from work and was five minutes late on May 14. She received a half point for reporting to work late and had accumulated eight attendance points. On May 22, the employer warned her that if she had any more attendance issues before October 7, 2013, she would be discharged. On October 7, 2013, one of the claimant's attendance points would roll off.

On September 15, the claimant was 45 minutes late for work. The claimant had been up with her sick son and overslept on September 15. She received a half point for reporting to work late. She then had accumulated 8.5 attendance points. The claimant received attendance

points for a variety of reasons. The September 15 incident was the third time she reported to work late. On September 17, the employer discharged the claimant for excessive absenteeism or because she violated the employer's attendance policy.

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 law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew or should have known her job was in jeopardy after she received her final written warning on May 22, 2013. The claimant did not have any attendance issues after May 22 until September 15. Since she reported to work late and accumulated more than eight attendance points, the employer had justifiable reasons for discharging her. The record does not establish that the claimant was habitually late for work. September 15, was only the third time she received points for reporting to work late. Since the claimant was up with a sick child that night the fact she overslept on September 15 does not establish that she intentionally failed to work as scheduled. On September 15, the claimant established reasonable grounds for reporting to work late. The evidence does not establish that the claimant committed work-connected misconduct. As of September 15, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's October 4, 2013 determination (reference 01) is reversed. The employer discharged the claimant for justifiable reasons – the claimant violated the employer's attendance by accumulating more than eight attendance points. The claimant did not intentionally fail to work as scheduled. She did not commit work-connected misconduct. As of September 15, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs