

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAKESHIA T FISHBACK
Claimant

APPEAL NO: 13A-UI-12805-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON RETAIL DELI MEATS INC
Employer

OC: 10/20/13
Claimant: Appellant (5)

Iowa Code § 96.5(2)a -Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 12, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is not 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 reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2012. The claimant worked as a full-time employee. The claimant understood the employer could discharge an employee when an employee accumulated 14 attendance points in a year. On October 9, 2013, the claimant accumulated 14 attendance points. The claimant signed a Last Chance Agreement. The Last Chance Agreement informed the claimant that if within the next 90 days she was absent or late for any reason, the employer would discharge her.

The claimant was incarcerated on October 18, 2013. She was arrested and charged for being involved in damaging another person's vehicle. After she was arrested and incarcerated, the sheriff's office contacted the employer to report the claimant would not be at work on October 19. The claimant reported to work on Monday and Tuesday, October 21 and 22. On Wednesday, October 23, the employer discharged her because she had not reported to work on October 19, 2013, and violated the Last Chance Agreement.

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 discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The claimant did

not voluntarily quit her employment. Instead, the employer discharged her for on-going attendance issues and violating the Last Chance Agreement.

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).

When the claimant signed the Last Chance Agreement, she knew or should have known her job was in jeopardy if she was absent or late for work for any reason in the next 90 days. Misconduct must be connected with the claimant's employment to be disqualifying. In this case, the claimant decided to associate with an individual that resulted in her arrest, incarceration and absence from work. The Iowa Supreme Court has ruled that off-duty misconduct may constitute work-connected misconduct. *Kleidosty v. Employment Appeal Board*, 482 N.W.2d 416, 418 (Iowa 1992). In this case the claimant's failure to make sure she did nothing to prevent her from working as scheduled resulted in violating the Last Chance Agreement. This violation amounts to work-connected misconduct. Therefore, as of October 20, 2013, the claimant is not qualified to receive benefits.

DECISION:

The representative's November 12, 2013 determination (reference 01) is modified, but the modification has no legal consequence. The claimant did not voluntarily quit her employment. Instead, the employer discharged her for violating the Last Chance Agreement when she was again absent from work on October 19, 2013. The claimant is disqualified from receiving unemployment insurance benefits as of October 20, 2013. 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css