

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY BETH SMITH
Claimant

APPEAL NO. 07A-UI-09606-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

METZ BAKING CO
Employer

**OC: 06/06/07 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Mary Beth Smith (claimant) appealed a representative's October 3, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Metz Baking Company (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 29, 2007. The claimant participated in the hearing. Eric Larvick, a union member, testified on the claimant's behalf. William Bell, the production manager, appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 26, 2006. The claimant worked varying and irregular hours in the sanitation department. Todd Campbell supervised the claimant.

On February 27, 2007, the claimant received a three-day suspension after she reported to work late on January 22 and then left early that same day. The claimant notified the employer on February 21 and 22 that she was ill and unable to work. On August 7, the claimant received another three-day suspension for attendance issues. The days the claimant did not work as scheduled prior to the August 7 suspension were June 6 when she left work early, July 8 when she notified the employer she was unable to work as scheduled, and left work early on July 25 when she did not feel well. After the August 7 suspension, the claimant understood that if she were late, left work early or did not report to work as scheduled she would be discharged. The employer has a no-fault attendance policy so even if an employee obtains a doctor's statement verifying she is ill and unable to work, the employer considers every time an employee does not work as scheduled as an absence.

The claimant's work hours varied. On September 8, she reported to work at 7:00 a.m. The claimant's name was not on a schedule and her supervisor did not tell her on September 8 that she was scheduled to work the next day at 6:00 a.m. The claimant had no idea she was scheduled to work the next day. On September 9 around 9:00 a.m., Campbell called the claimant to ask if she was reporting to work. The claimant indicated she would be at work as soon as she found her keys. The claimant arrived at work shortly after 9:00 a.m. After working an hour or so, the employer suspended the claimant and told her to go home because of continuing attendance issues.

The employer understood the claimant had been told to follow another employee's schedule, B.C., who had been scheduled to start work at 6:00 a.m. on September 9, 2007. The claimant's name was not on the schedule and she had not been told to follow B.C.'s schedule. On September 14, 2007, the employer discharged the claimant for excessive absenteeism.

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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(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). While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established compelling business reasons for discharging the claimant. The claimant knew and understood her job was in jeopardy after she received her second three-day suspension on August 7 for continuing attendance issues. On September 9, the claimant was late for work because she was not on the schedule and had not been told she was scheduled to work. Under the facts of this case, the claimant did not intentionally fail to work. She did not commit a current act of work-connected misconduct. Therefore, as of September 9, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 3, 2007 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of September 9, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css