

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER L SCHERRMAN**  
Claimant

**APPEAL NO: 11A-UI-10056-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SPORTS LICENSED DIVISION  
OF ADIDAS**  
Employer

**OC: 07/03/11**  
**Claimant: Appellant (2/R)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's July 26, 2011 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. Bruce Bargess represented the employer. Tricia Lytle, the human resource coordinator, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant 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 October 2010. She worked as a full-time silk screen operator. The employer's attendance policy informs employees they can be discharged for excessive absenteeism. The employer's attendance policy defines excessive absenteeism as 11 to 14 unplanned or unexcused absences in a rolling calendar year. On April 28, 2011, the claimant received the first step of the employer's disciplinary process for attendance issues.

On May 16, 2011, the claimant injured her fingers at work. In late May, the claimant tried to put stickers on tags, but her fingers hurt too much to do that job. The workers' compensation doctor then restricted the claimant from working and had her undergo physical therapy.

On June 28, the workers' compensation doctor released the claimant to work full time without any work restrictions. When the claimant reported to work on June 29, the employer assigned her light-duty work to help her transition back to her regular job. The claimant worked three hours putting size tabs on hangers. The job required the claimant to use both hands. After three hours of doing this work, the claimant told her supervisor her fingers were in too much pain to do this work any longer. Her fingers were also locking up. Instead of asking the claimant to put stickers on tags, the employer sent the claimant home.

The claimant reported to work on June 30. After being at work 14 minutes, the employer again sent the claimant home after she indicated she could again not put size tabs on hangers.

On June 30, the employer called the claimant at home and told her she received points for her absences on June 29 and 30. The employer warned the claimant that if she received one more attendance point, she would be discharged. The claimant had not known she would receive any points since the employer sent her home and the problems with her fingers was the result of her work-related injury. The claimant learned the employer would take off the June 29 and 30 attendance points if she obtained a doctor's statement indicating she could not do the work or was restricted from doing certain work. The claimant then asked the employer to schedule an appointment with the workers' compensation doctor. When the employer indicated this doctor would not change her work release, the claimant asked if the employer would set up an appointment with another doctor for a second opinion. Later that day, the employer told the claimant it was not the employer's responsibility to find a second doctor for her.

The claimant's fingers were not any better on July 1. The claimant called the employer to report she was unable to work on July 1. The claimant's supervisor contacted her late July 1 and asked her to report to the office shortly after her shift started. The employer wanted the claimant to sign her warnings for a Step II warning for her June 29 absence, a Step III warning for her June 30 absence and a Step IV warning or discharge for her July 1 absence. The claimant did go to the office to be told she was terminated. The employer discharged the claimant on July 1, 2011.

As of August 23, the condition of the claimant's fingers has not improved. She is unable to use them much and cannot do repetitive work. Currently, the claimant is looking for part-time work so she does not have to use the injured fingers very much.

#### **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).

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 employer established business reasons for discharging the claimant. Even though the employer's workers' compensation physician released the claimant to work without any work restrictions, she experienced pain in her fingers to the extent she could not put anymore size tabs on hangers. The employer sent the claimant home on June 29 and 30. Based on the facts in this case, the claimant did not commit work-connected misconduct. Although the employer's policy considered her absences excessive, the facts show she was unable to work her

eight-hour shifts on June 29 and 30 because of a work-related injury. As of July 3, 2011, the claimant is qualified to receive benefits.

A question of whether the claimant is eligible to receive benefits was raised during the hearing because the claimant continues to have problems with her fingers and is only looking for a part-time job. The issue of whether the claimant is able to and available for work because of continued medical issues with her fingers will be remanded to the Claims Section to determine.

**DECISION:**

The representative's July 26, 2011 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of July 3, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge. An issue of whether the claimant is eligible to receive benefits based on her ability to and availability for work because of continued medical issues with her fingers is **Remanded** to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs