

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIFFANY N BREWER
Claimant

APPEAL NO: 12A-UI-00871-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOODWILL INDUSTRIES OF NE IA INC
Employer

**OC: 01/09/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 9, 2012 determination (reference 03) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. Tom Kuiper, a TALX representative, appeared on the employer's behalf. Matt Bormann, the store manager, 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 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 on October 29, 2011. The employer hired her to work as a part-time sales associate. When she was hired, the employer explained that if she was unable to work as scheduled, the employer required her to notify the employer before her scheduled shift.

On November 12, the claimant left work early because she was ill. The claimant did not contact her supervisor on November 13 to report she was unable to work. On November 14, the claimant talked to the employer and reported she was unable to work until November 18. When the claimant returned to work on November 19, Bormann reminded her about the attendance policy and that she needed to talk to her supervisor when she was unable to work as scheduled.

On November 30, 2011, the claimant left work early because she did not feel well. On December 1, the claimant called and talked to Bormann five minutes before her scheduled shift to report she was unable to work. After letting the claimant know that calling the employer five minutes before she was scheduled to work was unacceptable, Bormann also told the claimant she needed a doctor's excuse for her absence. The claimant indicated she would get a doctor's excuse.

The claimant was not scheduled to work on December 2. She called the employer that evening. When she called on December 2, there were no managers or assistant managers at work. Bormann was on vacation. The claimant left a message with a co-worker that she would be off work because a doctor's excuse indicated she could not work until December 6. The message the employer received was incomplete. The employer learned only that the claimant had called and would be off work because of a doctor's note.

The claimant did not report to work as scheduled on December 3, 4, or 5. The claimant did not call the employer on December 3 or 4. On December 5 after her shift started, the claimant called and talked to Bormann. She told Bormann she would be at work the next day. During this conversation, Bormann indicated there was a problem because he had not heard from her since December 1 and the employer's policy required her to report all absences to a manager. Also, the employer had tried to call her after December 1 and could not contact her because she did not have a working phone. As of December 5, Bormann had not yet received the doctor's statement indicating the claimant was to be off work until December 6.

The employer received a copy of the doctor's note by December 6. When the claimant reported to work on December 6, Bormann allowed her to work. Even though he had submitted paperwork for her discharge to the office, the employer's human resource office had not yet told him if the claimant could continue working or if she would be discharged. At the end of her shift, Bormann learned the employer decided to discharge the claimant for excessive absenteeism and for failing to properly notify the employer she was unable to work as scheduled until December 6.

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. The employer discharged the claimant on December 6, 2011.

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).

The employer had justifiable business reasons for discharging the claimant for excessive absenteeism. The claimant did not intentionally fail to work as scheduled. She was unable to work because she was ill, which was supported by a doctor's note.

The question that must be addressed is whether the claimant should be disqualified from receiving benefits because she did not talk to a manager on December 2, 3, or 4. The employer acknowledged that if Bormann had received the doctor's statement on December 2 or at least before December 6, the claimant would not have been required to call in each day she had been restricted from working. Unfortunately, the claimant did not have a personal phone that worked, so the employer was unable to clarify her December 2 message. The claimant's failure to personally talk to a manager after December 1 amounts to an error in judgment. The claimant reasonably believed a co-worker would inform the employer she had called on December 2, which the co-worker did. Based on the claimant's testimony she told her co-workers she was unable to return to work until December 6, but this part of the claimant's message was not reported to the employer. If the co-worker only relayed part of the claimant's message justifies the employer's policy that required employees to talk to managers instead of co-workers. Even though the claimant talked to a co-worker, she reasonably relied on the co-worker to let the employer know she would be off until December 6. The employer knew or should have known the claimant was unable to work on December 3 after she called on December 2. The claimant did not call again until December 5, because she believed the employer had received the doctor's excuse and her co-worker reported that she could not return to work until December 6. Based on the facts of this case, the claimant could have done more to keep the employer informed of her work status. But at the same time, her doctor had restricted her from working and she was ill and did not have a phone. Under these circumstances, the claimant did not commit work-connected misconduct. As of December 11, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's January 9, 2012 determination (reference 03) is reversed. The claimant did not quit her employment. The employer discharged her for business reasons, but the claimant did not commit work-connected misconduct. As of December 11, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. If the employer becomes a base period employer, its account may at that time be subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw