

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGELA L PERIGEN**  
Claimant

**APPEAL NO. 08A-UI-07979-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CONAGRA FOODS PACKAGED FOODS  
COMPANY INC**  
Employer

**OC: 06/15/08 R: 01**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated August 20, 2008, reference 02, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on September 23, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Doug Carter participated in the hearing on behalf of the employer. Exhibits One through Three were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a packaging machine operator from August 6, 2007, to April 6, 2008. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination under the employer's no-fault attendance policy if they received eight attendance points. Attendance points were assessed for any unscheduled absence or tardiness. The claimant received warnings for excessive absenteeism on October 10, 2007 (one point), December 16, 2007 (six points), February 14, 2008 (six points), and March 27, 2008 (seven points). These absences were all for legitimate illness and were properly reported.

The claimant was absent from work on April 7 and 8, 2008, with proper notice to the employer because she was experiencing chest pains. She had arranged a doctor's appointment for April 9, 2008. When she called on April 8 and informed the employee taking the call that she had a doctor's appointment the next day and would bring in a doctor's excuse. The employee told the claimant that she was at eight attendance points and would be discharged even if she brought in the doctor's note. The claimant went to the doctor and got an excuse but did not return to work or submit the doctor's excuse because she was told she was fired.

## **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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).

While the employer may have been justified in discharging the claimant under its no-fault attendance policy, work-connected misconduct as defined by the unemployment insurance law has not been established. The claimant's absences were due to legitimate medical reasons and were properly reported. See 871 IAC 24.32(7) (definition of excessive unexcused absence).

## **DECISION:**

The unemployment insurance decision dated August 20, 2008, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css