

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA L HUENEKE
Claimant

APPEAL NO: 14A-UI-06375-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEDERAL EXPRESS CORP
Employer

OC: 05/18/14
Claimant: Respondent (1)

Iowa Code 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's June 10, 2014 (reference 01) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant participated at the July 14 hearing. Lucie Reed, the employer's representative, and Stephanie Boies, the Operations Manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons that qualify her to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in February 2009. She worked part time, 28 to 30 hours a week, as a courier. The employer's written attendance policy informs employees that during a rolling 12-month period, an employee cannot have less than 96.9 percent attendance. Employees receive reminder letters when their attendance is less than 96.9 percent. If an employee receives three reminder letters in a year, she can be discharged for violating the attendance policy.

The claimant received reminder letters on April 17 and June 12, 2013. On June 12 the claimant had to outline a plan to improve her attendance.

The claimant has some health issues and worked with her doctor to become healthier. On January 2 and 3, 2014 the claimant was ill and notified the employer she was ill and unable to work. The claimant provided a doctor's excuse for these absences. The claimant called in sick on March 11, 2014. She received online counseling on March 17, 2014 that told her where she was at with her attendance. The claimant called in sick on April 1 when she had to have a procedure after she went to the emergency room. The claimant provided the employer with a doctor's statement for the April 1 absence. As a result of the April 1 absence, the claimant's attendance was less than 96.9 percent.

The employer gave the claimant her third reminder letter in less than a year and discharged her on April 8. The employer discharged her because she received three reminder letters within a year for letting her attendance become less than 96.9 percent.

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 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).

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 when her attendance was less than 96.9 percent. For unemployment insurance purposes the issue is not whether the employer had the right to discharge an employer, but whether the claimant committed work-connected misconduct. The claimant's most recent absences were the result of the claimant being ill. Since the claimant properly reported her illness and it is not disputed that she provided the employer with doctor's statements for these absences, the claimant did not intentionally fail to work as scheduled. Instead, she was ill and unable to work. The claimant did not commit work-connected misconduct. As of May 18, 2014 the claimant is qualified to receive benefits.

DECISION:

The representative's June 10, 2014 (reference 01) determination is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of May 18, 2014 the claimant is qualified to receive 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/can