

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA J WALTON**  
Claimant

**APPEAL NO: 11A-UI-01396-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CSOI CORP**  
Employer

**OC: 12/26/10**  
**Claimant: Appellant (2)**

Section 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's January 28, 2011 determination (reference 01) that disqualified her and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Samantha Raper, a subpoenaed witness, participated in the hearing. Chad Smith, a supervisor, testified on the employer's behalf. During the hearing, Claimant Exhibits A and B were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge find 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 March 2007. She worked 32 to 40 hours a week as a clerk. Prior to December 28, the claimant had some issues with reporting to work late, but she did not have any absence issues. The claimant understood the employer allowed employees to find a co-worker or a replacement to work a shift an employee was unable to work. During the course of her employment, the claimant called the employer when she had been ill and unable to work.

On December 25, 2010, the claimant worked until 1:30 p.m. She did not feel well when she worked on December 25. After her family opened up Christmas presents on December 25, the claimant fell asleep. The claimant's daughter called the manager, Ray, to let him know that her mother was ill and unable to work on December 26. While Ray may have told the claimant's daughter the claimant had to call in her own absence, the claimant did not know about this message.

On Monday, December 26, the claimant contacted Dr. Twyner and made an appointment to see him on December 30. The claimant thought she had pneumonia. When the claimant still did not feel well on December 28, she sent Ray a text message letting him know she was unable to work because she was ill. Later, after the claimant received a call from a co-worker, Vicki, she

learned Ray did not have text messaging on his cell phone. The claimant was trying to get to Iowa City to see a doctor, but she could not get her car started. Shortly after the claimant discovered her car would not start, she called and talked to Ray. The claimant told him she was ill and was trying to get to Iowa City to see a doctor, but she had an appointment on December 30 at the local clinic. The claimant also told Ray she had her shifts on December 29 and 30 covered. Two of the claimant's co-workers agreed to take these shifts for the claimant.

The claimant saw Dr. Twyner on December 30. He gave her a doctor's statement indicating she was unable to work December 26 through January 1. (Claimant Exhibit A.). On December 31, when the claimant went to pick up her paycheck, she tried giving Ray the doctor's note. Ray then gave the claimant a written warning dated December 28, 2010. (Claimant Exhibit B.) The warning in part stated, "2 no-calls, no show – equals termination." The claimant did not understand what this meant and asked Ray if this meant she was terminated. He confirmed she had been terminated.

### **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)

Since employees have been allowed to have family members call in before when they are sick, the claimant did not know Ray requested that she call him on December 26, the claimant tried to contact Ray by texting him on December 28 to let him know she was ill and unable to work, the claimant made arrangements with other employees to cover her shifts on December 29 and 30, and her doctor verified she was unable to work December 26 through January 1, the claimant did not intentionally or substantially disregard the employers' interests. The employer may have had justifiable business reasons for discharging the claimant, but she did not commit work-connected misconduct. As of December 26, 2010, the claimant is qualified to receive benefits.

**DECISION:**

The representative's January 28, 2011 determination (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of December 26, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/pjs