

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLA E WHITE
Claimant

APPEAL NO. 14A-UI-03676-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 03/16/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 2, 2014, reference 02, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on April 28, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. John Ryan participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as an assistant manager from August 6, 2012, to March 12, 2014. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer before the start of the shift if they were not able to work as scheduled and were subject to discharge after receiving 10 attendance points in a 90-day period.

The claimant was absent with proper notice to the employer on December 21, 2013, after she sprained her ankle and received three points. She was over three hours late for work on February 20, 2014, because she thought she was scheduled to work at noon but it was actually 8:00 a.m. She received five points for that incident.

The claimant was scheduled to work at 8:00 a.m. on March 11. The claimant was extremely ill on March 11 and the previous day. As a result of her illness, she slept through her alarm and did not wake up until about 8:30 a.m. She immediately called to notify the employer about her being sick and unable to work. The employer assessed five points for missing work without proper notice.

The employer discharged the claimant on March 12, 2014, for violating the attendance policy because she had 13 points in 90 days. After she was discharged, the claimant brought in a doctor's notes excusing her from working on March 11.

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. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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).

The unemployment insurance rules provide: "Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." 871 IAC 24.32(7).

The unemployment insurance rules provide: "While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act." 871 IAC 24.32(8).

The Iowa Court of Appeals ruled that a failure to notify the employer about an absence may be excused if the claimant is unable due to illness to call in. Floyd v. Iowa Dept. of Job Service, 338 N.W.2d 536 (Iowa Ct. App. 1983); Gimbel v. Employment Appeal Board, 489 N.W.2d 36 (Iowa Ct. App. 1992).

I conclude that no current act of willful and substantial misconduct has been proven in this case. The final absence was due to legitimate illness. The claimant's failure to call in before the start of the shift was the result of her illness, which caused to sleep through the alarm.

DECISION:

The unemployment insurance decision dated April 2, 2014, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css