

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE L KOCH
Claimant

APPEAL NO. 08A-UI-03091-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

**OC: 02/10/08 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Labor Ready Midwest, Inc. (employer) appealed a representative's March 18, 2008 decision (reference 01) that concluded Nicole L. Koch (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. The employer responded to the hearing notice, but was not available for the hearing. A message was left for the employer's witness to contact the Appeals Section immediately. During the hearing, Claimant Exhibits A and B were offered and admitted as evidence.

After the hearing had been closed and the claimant had been excused, the employer contacted the Appeals Section. The employer made a request to reopen the hearing. Based on the employer's request to reopen the hearing, the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working on the employer's behalf in August 2007. In October 2007, the claimant received a warning when she reported to work at her usual time, 10:00 a.m., and had not noticed her schedule had been changed. The claimant did not know her schedule had been changed for her to start at 8:00 a.m. As a result of this change, the claimant was two hours late for work and received a written warning.

On January 31, 2008, the claimant reported to work early but was in pain. Before the claimant reported to work, she had called the doctor's office. After the claimant arrived at work, she informed the manager she did not feel well and was waiting for her doctor to call to let her know

when she could be examined. After her doctor called, the claimant left work around 11:30 a.m. The manager on duty knew the claimant left for a doctor's appointment.

The claimant's doctor examined her and gave her a statement indicating she could not work again until February 11, 2008. The claimant was also referred to another medical facility. After the claimant left her doctor's office, but before the second doctor's appointment, the claimant contacted the employer and informed the employer that her doctor restricted her from doing any work until February 11, 2008.

On February 5, 2008, the employer informed the claimant she was discharged because her absences were considered unexcused. Since the claimant had a doctor's statement restricting her from working from January 31 through February 11, 2008, she understood the employer only considered an absence excused if an employee obtained prior authorization to take time off. The claimant's physician released her to return to work on February 11, 2008.

The employer contacted the Appeals Section after the hearing had been closed and the claimant had been excused. The employer was not available for the scheduled hearing, because the employer's witness understood the hearing was scheduled for April 15, Tuesday, not April 14, Monday. The employer's witness did not receive a copy of the hearing notice. Instead, a TALX representative informed the employer's witness about the day and time of the hearing.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7) (b) and (c).

What information the employer's representative, TALX, provides to the employer's witness before a hearing is between the employer and TALX. Any miscommunication issues between TALX and the employer's witness is an issue that must be resolved between the employer and TALX. Since the employer or its representative received information about the day and time of the hearing, the employer did not establish good cause to reopen the hearing. Therefore, the employer's request to reopen the hearing is denied.

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).

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 may have had business reasons discharging the claimant. The evidence does not establish that the claimant intentionally failed to work as scheduled. When the claimant was ill, she took reasonable steps by going to her doctor, who then restricted her from working January 31 through February 11, 2008. The claimant immediately informed the employer about this medical restriction. The claimant did not commit work-connected misconduct. As of February 11, 2008, the claimant is qualified to receive benefits.

DECISION:

The employer's request to reopen the hearing is denied. The representative's March 18, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 10, 2008, 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/kjw