

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLA Z BARTON

Claimant

APPEAL NO. 10A-UI-05459-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAPTIVE PLASTICS INC

Employer

OC: 04/12/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Captive Plastics Inc. filed a timely appeal from a representative's decision dated April 1, 2010, reference 01, that held the claimant eligible to receive unemployment insurance benefits based upon her separation from the employer. After due notice, a telephone hearing was scheduled for and held on May 26, 2010. Although duly notified the claimant did not participate. The employer participated by Ms. Sandy Simpson, Plant Administrator.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Carla Barton was most recently employed by Captive Plastics Inc. from February 5, 2008 until March 9, 2010 when she was discharged for exceeding the permissible number of attendance infraction points allowed under company policy. Ms. Barton worked as a full-time third-shift packer and was paid by the hour. Her immediate supervisor was Darin Vierman.

Ms. Barton was discharged after she exceeded the permissible number of infraction points on the company's no-fault attendance policy. Employees are subject to being discharged when they accumulate nine and one-half occurrence points within a one year rolling period. The claimant had been warned on January 22, 2010 that she had accumulated seven and one-half points and that her employment was in jeopardy.

Ms. Barton called in on March 2, 2010 indicating that she could not report for work that evening and requested the remainder of that week off using vacation time. The claimant's request was approved. On March 8, 2010 Ms. Barton called in to report her impending absences for March 8 and 9. The claimant's absence was properly reported. Although employees are not required to give a reason for their absence the employer later learned that the claimant had been absent due to illness of her child.

Ms. Barton was otherwise considered to be a good worker. The employer however, requires good attendance due to the nature of the employer's production work.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes Ms. Barton was discharged for intentional misconduct in connection with the employment. It does not.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and

what misconduct warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988).

The Iowa Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is one form of misconduct. The Court held that the absenteeism must be both excessive and unexcused. The Court further held, however, absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. In determining whether an individual has engaged in misconduct sufficient to warrant the denial of unemployment insurance benefits the administrative law judge is required to consider circumstances including the sudden illness of family members, especially small children. The employer's witness indicated in her testimony her belief that Ms. Barton's most recent absences were due to the illness of a child.

While the decision to terminate Ms. Barton may have been a sound management decision, the administrative law judge concludes based upon the evidence in the record that the claimant's most recent absences were due to illness and were properly reported and therefore do not constitute job misconduct sufficient to warrant the denial of unemployment insurance benefits.

DECISION:

The representative's decision dated April 1, 2010, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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