IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANNETTE M FULLER
Claimant

QWEST CORPORATON
Employer

APPEAL NO: 08A-UI-00103-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/09/07 R: 03
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Annette M. Fuller (claimant) appealed a representative's December 31, 2007 decision (reference 01) that concluded she was not qualified to receive benefits, and the account of Qwest Corporation (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 17, 2008. The claimant participated in the hearing. Stephanie Reider, a representative with Barnett Associates, Inc., appeared on the employer's behalf. Caryl Gilstrap, a customer service manager, testified on the employer's behalf. Based on 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.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on November 5, 2001. The claimant worked as a full-time directory assistance agent. Gilstrap supervised the claimant. The employer's attendance policy informs employees a progressive discipline starts when an employee has unsatisfactory attendance by having more than four attendance occurrences and/or being absent more then seven days in a rolling calendar year. An employee cannot have more than five tardies in a rolling calendar year either. After the employer has identified an employee has having unsatisfactory attendance, the employee receives a written warning. The next attendance occurrence results in a written warning of dismissal. If the employee is absent again, the employer's policy indicates the employee will be discharged.

In January 2007, the employer gave the claimant provisional FMLA for absences she had January 7 through 10, January 17 and four hours on January 24. When the claimant submitted FMLA paperwork her doctor had completed for these days, the employer did not accept the way the forms were completed. The claimant and her doctor submitted paperwork more than once before the employer granted the claimant FMLA as of January 29, 2007. The employer did not

grant the claimant FMLA for time she was absent January 7 through 10, 17 and 24 even though the claimant was absent for the same problem. As a result, the claimant had three attendance occurrences and four days and four hours of absenteeism.

On November 13, the claimant's son was hit by a car. As a result the claimant was absent from work. On November 19, 2007, the employer gave the claimant a warning of dismissal because she had accumulated eight occurrences and ten days and four hours of absence. The claimant understood her job was in jeopardy.

The claimant agreed to trade hours with another employee on December 5. The claimant worked until 6:00 a.m. She understood the shift she had agreed to work started at 9:30 p.m. on December 5. The claimant worked until 6:00 a.m. on December 5. She did not realize the shift she had agreed to work started at 9:30 a.m. When the claimant did not report to work at 9:30 a.m., the employer called her. The claimant returned the employer's call around 11:00 a.m. The claimant asked to talk to Gilstrap to find out what she should do. Gilstrap was not at work that day. When the claimant asked if this would count as an occurrence even if she came to work, the claimant was told it would. The claimant had recently injured herself at work and decided to stay home instead of going to work when the employer would consider it an attendance occurrence regardless of whether she went to work or not.

On December 11, 2007, the employer discharged the claimant because she violated the employer's attendance policy when she did not report to work at 9:30 a.m. on December 5, 2007.

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 section 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 established justifiable business reasons for discharging since the claimant violated the employer's attendance policy. The claimant knew or should have known her job was in jeopardy after she received a warning of dismissal on November 19, 2007.

The claimant's attendance became a problem when the employer did not grant her FMLA for absences on January 7 through 10, 17 and four hours on January 24. The claimant was absent these days for the same reason she was absent on January 29, which the employer excused or did not consider because this absence was covered under FMLA. When the claimant agreed to trade hours with another employee, she had no idea she had agreed to work at 9:30 a.m. when she did not get off work from her own shift until 6:00 a.m. that same day. The claimant logically assumed she had agreed to work at 9:30 p.m. for another employee. Even after the employer called the claimant on December 5, the claimant asked to speak to Gilstrap to find out what she could do to keep her employment. Unfortunately, Gilstrap was not at work and the claimant was told that she would receive an attendance occurrence whether she reported to work or did not report to work. Based on the facts in this case, the claimant did not intentionally fail to work as scheduled. She did not deliberately violate the employer's no-fault attendance policy. The claimant did not commit work-connected misconduct. Therefore, as of December 9, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's December 31, 2007 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of December 9, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs