

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWNIELLE N GILLILAND
Claimant

APPEAL NO: 13A-UI-00192-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 12/28/12
Claimant: Appellant (5)

Iowa Code § 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's December 28, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant did not respond to the hearing notice or participate in the hearing. Sabrina Bentler, a Corporate Cost Control representative, appeared on the employer's behalf. Pat Shay and Nancy Richardson were available to testify. Based on the administrative record and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in February 2012. She worked as a part-time deli clerk. When the claimant began her employment, she received a copy of the employer's attendance policy. The employer's policy excuses an absence for illness if the employee provides a doctor's excuse for that absence. After an employee has three unexcused absences, the employer terminates the employee's employment for on-going attendance issues.

On April 3, 2012, the claimant received a written consultation for absences she had on April 1 and 2. The claimant had transportation issues these days and could not get to work. The claimant transferred to another store on April 16, 2012. On October 15, 2012, the employer talked to the claimant about her attendance. The employer gave her information about the employer's EAP program. On November 13, the employer suspended the claimant for one week because of on-going attendance issues. The claimant did not have a ride to work on November 9, 10 or 13 and did not report to work. When the employer suspended her, the employer told the claimant she could not have any more unexcused absences or she would be discharged. On November 24, the claimant called the employer to report she did not have a ride to work and would not be at work as scheduled.

On December 3, when the claimant came to work, the employer discharged her for on-going attendance issues.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The record does not establish that the claimant quit her employment. Instead, the employer discharged her on December 3, 2012.

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 claimant did not start receiving warnings about her attendance until she was absent as a result of transportation issues. After the employer suspended the claimant because she had missed three days for transportation issues, she knew or should have known her job was in jeopardy and she needed to make sure she got work. Instead, after she was suspended she again was absent because she did not have a ride to work on November 24, 2012. The claimant's failure to make sure she had a ride to work, after she had been suspended, amounts to an intentional disregard of the standard of behavior the employer had a right to expect from an employee. The claimant committed work-connected misconduct. As of December 2, 2012, the claimant is not qualified to receive benefits.

DECISION:

The representative's December 28, 2012 determination (reference 01) is modified, but the modification has no legal consequence. The claimant did not quit her employment. Instead, the employer discharged her for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 2, 2012. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css