

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**JESSICA J RAY  
800 N 3<sup>RD</sup> #12  
BURLINGTON IA 52601**

**WINEGARD COMPANY  
C/o TALX – EMPLOYERS UNITY  
PO BOX 749000  
ARVADA CO 80006 9000**

**Appeal Number: 06A-UI-01367-DWT  
OC: 01/01/06 R: 04  
Claimant: Respondent (1/R)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Winegard Company (employer) appealed a representative's January 24, 2006 decision (reference 01) that concluded Jessica J. Ray (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. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 21, 2006. The claimant participated in the hearing. Michael Sloan, a representative with TALX, appeared on the employer's behalf. Robert Anderson, a team leader, appeared as a witness for the employer. 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 August 11, 2003. The claimant worked full-time. The employer's attendance policy informs employees that attendance will be reviewed on a monthly basis and if there are attendance problems, the employer will start disciplinary procedures.

On December 7, 2005, the claimant received a written warning for excessive absenteeism. The claimant understood her job was in jeopardy when she received the written warning. The employer knew the claimant had been having complications with her pregnancy and had been absent for health-related reasons. The claimant was scheduled for a lab test on December 12 and told the employer she would have to be absent later that week for tests. The employer assured the claimant that as long as she had a doctor's excuse of statement, her absences would not count against her.

Prior to December 7, the claimant had turned in some doctor's statements that had been lost by various supervisors. A human resource representative acknowledged that because the claimant had five supervisors, her doctor's statements were sometimes misplaced and the employer considered an excused absence as unexcused.

The claimant properly notified the employer she was unable to work as scheduled on December 12, 29 and 30. The employer excused the December 12 and 29 absences, but did not excuse the December 30 absence. The employer did not have documentation for the December 30 absence. The claimant called the employer on January 3 and 4, but she may have notified the employer she would be absent later than one hour prior to her scheduled shift. When the claimant reported to work on January 5, she had a doctor's excuse for her January 3 and 4 absences. The employer immediately told the claimant she was discharged because of more attendance problems. The claimant, stunned, did not think to present the employer with the doctor's statements. Even though the claimant was the fourth person on a three-person team, the employer wanted a dependable person on this job. The claimant understood an employee would receive three written warning before the employer discharged the employee. Previously, the employer gave the claimant written warnings for attendance issues on March 30, 2004, January 12, 2004 and October 29, 2003.

#### 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 §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 claimant understood her job was in jeopardy for attendance issues when she received the December 7, 2005 written warning. The claimant, however, also understood that if she had a doctor's excuse or statement for her absences, the employer would excuse her absence and the absence would not jeopardize her employment. After the claimant received the December 7 warning, she was absent five days. The claimant had a doctor's statement for these days, but because the employer discharged her before finding out if she had a doctor's excuse the claimant did not give the employer the most doctor's statements.

The claimant acknowledged she may not have notified the employer in a timely manner on January 3 or 4 about her absence these days. The employer did not know if the claimant called the employer, so the claimant's testimony that she called the employer, even if late, is credible. Ultimately, the employer discharged the claimant because of attendance problems that were the result of complications with her pregnancy. The employer needed a dependable employee on the job the claimant was assigned to do and the claimant's absence indicated she was not a dependable employee. The employer established compelling business reasons for discharging the claimant. The claimant, however, was unable to work the days she was absent after December 7, 2005. While the claimant should have made a point of contacting the employer an hour before her shift, this failure does not by itself amount to work-connected misconduct. The employer discharged the claimant because she was unable to work her assigned shifts and became an undependable employee because of health-related reasons. The employer did not establish the claimant was discharged for work-connected misconduct. As of January 1, 2006, the claimant is qualified to receive unemployment insurance benefits.

During the hearing, the claimant presented information that she had been in the hospital for at least two weeks. The issues of whether the claimant was hospitalized and if she was able to and available for work during these weeks is remanded to the Claims Section to investigate and issue a written decision.

#### DECISION:

The representative's January 24, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of January 1, 2006, 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. An issue of when the claimant was hospitalized and if she was able to and available for work is remanded to the Claims Section to investigate and issue a written a decision.

dlw/s