IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CAMILE L WHITE
Claimant

CARGILL MEAT SOLUTIONS CORP
Employer

APPEAL NO: 08A-UI-03389-DWT

ADMINISTRATIVE LAW JUDGE DECISION

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

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (employer) appealed a representative's March 26, 2008 decision (reference 01) that concluded Camile L. White (claimant) was qualified to receive 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 April 22, 2008. The claimant participated in the hearing. Laurie Elliott, the assistant human resource manager, appeared 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 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 on August 28, 2007. The claimant worked as a full-time production employee. At the time of hire, the claimant received information about the employer's attendance policy. The employer's attendance policy requires employees to notify the employer 30 minutes prior to a shift when they are unable to work as scheduled. When employees notify the employer they are unable to work, they receive one attendance occurrence. Employees receive two attendance occurrences when they do not properly notify the employer when they are unable to work as scheduled. The policy also states that if an employee does not call or report to work for three consecutive days, the employer considers the employee to have voluntarily quit employment.

On February 12, 2008, the claimant's supervisor warned the claimant that her job was in jeopardy because she had accumulated 9.5 attendance occurrences. The claimant signed paperwork indicating she had been warned her job was in jeopardy. After this discussion, the claimant received a call from her daughter's school. The school called because the claimant needed to pick up her daughter who became ill at school.

On February 12, the claimant tried without success to find someone to pick up her daughter from school. The claimant asked if she could leave work to pick up her daughter, take her home and then return to work. The claimant's husband was at home, but he could not pick up their daughter because the claimant had their only car at work. The claimant's supervisor told the claimant he did not want her to leave work, and if she did he would assess her two attendance occurrences. The claimant had to pick up her daughter and left work to do so.

The claimant did not know for sure if her supervisor actually terminated her employment. The claimant either took care of her sick daughter or was sick herself from February 13 through February 29, 2008. She called in everyday she was scheduled to work February 13 through 29, 2008. On February 29, 2008, the claimant talked to her supervisor and learned he considered her terminated on February 12, 2008, when she left work early to pick up her ill daughter from school. The claimant did not contact the employer after February 29, 2008.

The claimant's supervisor did not submit termination papers to the employer's human resource department. When the claimant did not call or report to work on March 1, 3, 4 or 5, the employer considered the claimant to have voluntarily quit her employment. The employer no longer considered the claimant an employee as of March 6, 2008. The employer's records indicate the claimant quit her employment.

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 sections 96.5-1, 2-a. A preponderance of the evidence indicates on February 29, the claimant's supervisor informed the claimant she had been discharged on February 12, 2008. The claimant reasonably relied on her supervisor's statements and stopped calling or reporting to work after February 29. If the claimant's supervisor did not have authority to discharge her, the claimant did not know his information was incorrect.

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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

On February 12, the claimant offered to pick up her child from school, take her home and then return to work. When her supervisor indicated this was not acceptable, the claimant had no choice but to leave work to pick up her sick child from school. The claimant's supervisor's decision was not reasonable under the circumstances. Only after the claimant's supervisor told her she had been discharged, did she stop notifying calling in to report she was unable to work.

Since the claimant accumulated more than ten attendance occurrences, she violated the employer's attendance policy. The facts do not, however, establish that she intentionally or substantially disregarded the employer's interests on February 12 when she left work early as the result of a family medical situation that could not wait until the claimant's shift ended. The facts do not establish that the claimant committed a current act of work-connected misconduct. As of March 2, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's March 26, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of March 2, 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.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs