

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARLA K ROBERTS
Claimant

APPEAL NO. 06A-UI-10247-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINNEBAGO INDUSTRIES
Employer

**OC: 07/02/06 R: 02
Claimant: Appellant (2)**

Section 96.5-2 - Discharge

STATEMENT OF THE CASE:

Darla K. Roberts (claimant) appealed a representative's October 16, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Winnebago Industries (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 November 6, 2006. The claimant participated in the hearing. Gary McCarthy, the personnel supervisor, 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 employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 18, 1994. The claimant worked full-time as an advanced assembler/fabricator. The employer's written attendance policy informs an employee that after the employee accumulates 64 hours of absence in a rolling calendar year, the employer begins its progressive disciplinary process. The claimant understood reporting to work late was considered a tardy, not an absence. Employees could accumulate six tardies before the employer would discharge them. The claimant also understood that if an employee reported to work late from a lunch break three times, the employer would discharge the employee.

The employer noticed the claimant started having attendance problems in November 2002. The claimant acknowledged that after her son was in an accident in late July 2005, she had been off work when she took a leave of absence under the Family Medical Act. As a result of her son's continuing therapy, the claimant has taken off some time from work.

During the last year of the claimant's employment, the claimant received a suspension for reporting to work a minute late on January 12, 2006. On September 15, 2006, during her

30-minute lunch break, the claimant had to pick up her son from therapy. The claimant did not realize her son needed a blood test and could not find him right away. As a result of not knowing where to pick up her son, the claimant was one minute late from returning from lunch. The employer suspended the claimant the rest of September 15, 18 and 19.

When the claimant returned to work on September 20, the employer gave her a final written warning. Based on various problems, the employer warned the claimant that if she had any future incidents of misconduct, the employer would discipline her, which could include terminating her.

On September 26, 2006, the claimant did not hear her alarm clock or turned it off and went back to sleep. When the claimant woke up, she knew she would be late for work and immediately called the employer prior to 7:00 a.m. The claimant informed the employer she would be late for work. The claimant arrived at work at 7:49 p.m. or 49 minutes late. The employer discharged the claimant on September 26 because she was late for work after she had just recently received a final written warning that told her that her job was in jeopardy.

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 knew her job was in jeopardy when the employer suspended her on September 15 and gave her a final warning on September 20, 2006. Prior to September 26, the claimant had not overslept and did not have a problem getting to work on time in the morning. On September 26, the claimant did not plan to oversleep. She did so by accident. As soon as the claimant woke up, she notified the employer that she would be late for work. The claimant arrived at work as soon as she could get there. The claimant's actions the morning of September 26 show that she took reasonable steps to let the employer know what had happened. The claimant did not intentionally fail to work as scheduled on September 26 or 15.

The employer established business reasons for discharging the claimant. The employer did not, however, discharge the claimant for reasons constituting work-connected misconduct. As of September 24, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 16, 2006 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of September 24, 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs