IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARIA MARTINEZ
Claimant

CARGILL MEAT SOLUTIONS CORP
Employer

APPEAL NO: 08A-UI-04516-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/30/08 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (employer) appealed a representative's April 29, 2008 decision (reference 01) that concluded Maria Martinez (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 27, 2008. The claimant participated in the hearing and was represented by Philip Miller, attorney at law. Lauri Elliott appeared on the employer's behalf. Ike Rocha served as interpreter. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 14, 1999. She worked full time as a production worker in the employer's Ottumwa, Iowa pork processing facility. Her last day of work was April 2, 2008. The employer discharged her on that date. The reason asserted for the discharge was excessive absenteeism.

The claimant's official job was working on the first shift on the line in the employer's bacon department. The regular schedule was to work Monday through Friday, but the plant frequently worked at least at some capacity on Saturdays. The employer has a ten-point attendance policy. The claimant was at eight points as of February 6, 2008, when she was provided with a warning to that effect. The eight points included six tardies assessed at a half-point each, frequently due to weather or other transportation issues, and five absences assessed at one point each, some if not all due to personal medical issues including at least one for which a doctor's note was provided.

The claimant had incurred some work-related injuries during her employment for which she was placed on light duty at various periods of time. As of March 19, 2008 the claimant had a

five-pound lifting restriction; as a result, as of that date she was placed into the shipping department placing labels on cartons, and was not working actively in the bacon department. On or about March 27 a notice was posted in the bacon department indicating that some lines were scheduled to work overtime on Saturday, March 29. However, the claimant was not working in that area on either March 27 or March 28 and so did not see the notice. She saw her supervisor several times over those days and he did not advise her that the notice was posted or that even if it included her regular line that it applied to her since she was on light duty assignment in the shipping department. The usual practice was that if a person is on light duty they are not included in any assigned overtime. As a result, the claimant did not report for the scheduled overtime on March 29.

The employer assessed the claimant two points for being a no-call, no-show for the overtime on March 29. This brought the claimant to the ten-point discharge level; therefore, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); Cosper, supra; Gaborit v. Employment Appeal Board, 734 N.W.2d

554 (Iowa App. 2007). In order to establish the necessary element of intent, the final incident must have occurred despite the claimant's knowledge that the occurrence could result in the loss of her job. Cosper, supra; Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). Here, the claimant was not on notice that there was any overtime scheduled for March 29 that applied for her, and reasonably concluded that she did not need to call or report for work that day. The employer has failed to meet its burden to establish misconduct. Cosper, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's April 29, 2008 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

_____
Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/pjs