

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VERONICA R GARCIA
Claimant

APPEAL NO. 13A-UI-05759-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VANTEC INC
Employer

OC: 04/14/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 10, 2013, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on July 3, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Dennis Peterson participated in the hearing on behalf of the employer with a witness, Marilyn Fisher.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a machine operator from July 23, 2012, to December 28, 2012. She worked from 11:15 p.m. to 7:30 a.m. on weekdays. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination after receiving eight attendance points. Being late or leaving work early count one-half point and absences one point.

The claimant was late on July 26, September 7, and December 21 and left work early on August 15 and October 4. She was absent on August 16, August 24, October 19, October 25, and November 28. The attendance occurrences on August 15, August 16, and August 24 were for illness. The reasons for the remainder of the occurrence were not reported when the claimant called in.

The claimant received discipline regarding her attendance on September 12, October 29, and November 29. The claimant knew that she was at seven and one-half points as of December 21 and could be discharged if she had eight points.

The claimant was nine minutes late for work on December 28, 2012. She normally went back to bed for a couple of hours before getting up to go to work. On this occasion, she had taken

some pain medication for a work-related injury around dinnertime and overslept. This was the same reason she was late on December 21.

The employer discharged the claimant on December 28, 2012, for violating the employer's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." 871 IAC 24.32(7).

The claimant was repeatedly late and absent and received warnings for her attendance. While some of the attendance issues were due to illness, not all were. Since the claimant knew she was on her last half step of the attendance policy and had problems with oversleeping after taking the pain medication, she should have taken extra steps to make sure she would arrive at work on time. Work-connected misconduct has been shown.

DECISION:

The unemployment insurance decision dated May 10, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css