

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRY D KELLUM
Claimant

APPEAL NO: 10A-UI-13379-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 08/29/10
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 22, 2010 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the telephone hearing. Jessica Sheppard, a human resource generalist, appeared on the employers' behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in July 2009. She worked as a full-time production employee. The employer's attendance policy assesses an employee one point if the employee calls the employer to report she is ill and unable to work. Employees receive two points when the employee does not call the employer or report to work.

On June 16, 2010, the claimant had accumulated 10.5 points, primarily due to days the claimant notified the employer she was ill and unable to work. The claimant entered into a Last-Chance Agreement on June 16. The agreement stated the claimant could not have any attendance issues until March 16, 2011.

On August 30, a friend picked up the claimant in the morning so the claimant could do some personal business. The claimant was scheduled to report to work by 2:36 p.m. Before the claimant was scheduled to work, her friend's vehicle had a flat tire. Neither the claimant nor her friend knew how to change the tire. The DART bus did not pick up passengers at the location where the flat tire occurred. When the claimant realized, she might be late for work, she called the local taxi service for a ride to work. She learned she had to wait about an hour before she could be picked up. This meant she would not be picked up until around 3 p.m.

After the flat tire was changed, the claimant reported to work at 3:14 p.m. The employer gave her a half point for reporting to work late. Since the claimant had another attendance issue before March 16, 2011, she violated the terms of the Last-Chance Agreement and the employer discharged her on August 31, 2010.

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 section 96.5-2-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).

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).

The claimant knew her job was in jeopardy when she signed the Last-Chance Agreement. The claimant also understood she would be terminated if she had any attendance issues before March 16, 2011. On August 30, the claimant did not intentionally fail to report to work on time. After her friend's vehicle had a flat tire, the claimant took reasonable steps to get to work on time. Unfortunately, the claimant was not successful in getting a taxi and the flat tire was not changed in time so she could report to work by 2:36 p.m. The facts show that the claimant did not intentionally fail to report to work on time. She made reasonable attempts to get to work on time after her friend was unable to take her to work because of an unexpected flat tire. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. Therefore, as of August 29, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's September 22, 2010 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of August 29, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs