

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERTA M LORENZ
Claimant

APPEAL NO: 09A-UI-14495-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OZARK AUTOMOTIVE DISTRIBUTORS INC
Employer

OC: 08/23/09
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Ozark Automotive Distributors, Inc. (employer) appealed a representative's September 16, 2009 decision (reference 01) that concluded Roberta M. Lorenz (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for non disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 22, 2009. The claimant participated in the hearing. Whitney Smith, a human resource 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 October 10, 2007. The claimant worked as a full-time outbound material handler. C.B. supervised the claimant. The claimant received a copy of the employer's attendance policy when she began working. The policy informs employees they will receive a verbal warning after six attendance issues. At eight attendance issues, the employee receives her first written warning. The next attendance issue results in a second written warning. At the next attendance issue, the employee receives a final written warning or a decision making leave day. After this warning, the employee will be discharged if she has an attendance issue in the next 30 days. The claimant received her first written warning on February 20, 2009. She received her second written warning on March 19, 2009. When the claimant received her decision making leave day or final written warning on June 9, 2009, she knew her job was in jeopardy.

On August 27, 2009, the claimant returned from her lunch break three minutes late. The claimant asked C.B. if she could take a longer lunch because she needed to run some errands and take her dog to the groomer. The claimant asked C.B. before she left because she knew

her job was in jeopardy. The claimant understood from C.B. it would not be a problem if she were a bit late getting back from her lunch break.

When the claimant reported three minutes late from her lunch break on August 27, 2009, the employer discharged her. C.B. did not remember the claimant talking to her about taking a longer lunch. The claimant did not know she needed to go to the front office to get authorization to take a longer lunch. This policy went into effect in early July. Front office personnel write down an employee's schedule change.

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 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).

Pursuant to its attendance policy, the employer established business reasons for discharging the claimant. The claimant knew and understood her job was in jeopardy for attendance issues when she received her final written warning on June 9, 2009. Since the claimant understood her job was in jeopardy, she made a point of talking to her supervisor before she ran errands during her lunch on August 27, 2009.

For unemployment insurance purposes, the claimant did not commit work-connected misconduct. The claimant's testimony that she talked to her supervisor about returning late from lunch on August 27 is credible. The claimant knew her job was in jeopardy and she could have made other arrangements if she had not received permission to report back a few minutes late from lunch. The employer's policy about arranging a shift schedule change at the front office so the change is documented is a good policy. If the claimant had received something in writing, she would not have been discharged. However, the claimant's testimony that she talked to her supervisor before she ran her errands and took her dog to the groomer on August 27 is credible.

On August 27, the claimant understood she had her supervisor's permission to report late from lunch. The claimant did not intentionally fail to follow the employer's attendance policy and she did not substantially violate the policy when she came back from lunch three minutes late. The facts do not establish that she committed work-connected misconduct. Therefore as of August 23, 2009, she is qualified to receive benefits.

DECISION:

The representative's September 16, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of August 23, 2009, 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs