

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE L MCCLELLON
Claimant

APPEAL NO. 10A-UI-01990-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARCO LTD
Employer

OC: 12/20/09
Claimant: Respondent (5)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 1, 2010, reference 03, that concluded she was eligible for partial benefits because her hours were reduced. The basis of the appeal was that the claimant had been discharged on February 1, 2010. A telephone hearing was held on March 26, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Jason Larsen participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer from September 14, 2008, to February 1, 2010. She started working as a crew member and was promoted to a crew leader position. In the fall 2009, she was demoted back to a crew member position due to repeated attendance problems and her hours were reduced, which caused her to file for partial unemployment insurance benefits effective December 20, 2009.

On January 14, 2010, the claimant met with her manager and district manager to review the warning she had received for lateness and absences. She was given a final warning stating that she would be discharged if she had any further attendance issues.

The claimant was scheduled to work from 5:00 p.m. to close on January 28, 2010. She had a dental appointment at 3:00 p.m. that day to have her teeth cleaned. After her teeth were examined, the dentist determined that she needed to have a tooth pulled. At about 3:15 p.m. the claimant called the restaurant and told the assistant manager she was going to have her tooth pulled and she did not believe she would be able to work. The assistant manager told her that no one would be able to work for her and she would be terminated if she missed work. She called again at about 3:45 p.m. and stated they were about to pull her tooth and there was no way she could work.

The employer discharged the claimant on February 1, 2010, due to her absence on January 28.

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 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 substantial and 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).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's final absence, even when her prior attendance history is considered, was not for work-connected misconduct. It was due to a legitimate reason and was properly reported to the employer when the claimant discovered she was not able to work.

DECISION:

The unemployment insurance decision dated February 1, 2010, reference 03, is modified with no change in the outcome. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css