

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIKKI J COULTER
Claimant

APPEAL NO. 06A-UI-09733-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

**OC: 09/03/06 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 22, 2006, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on October 17, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Molly Robbins participated in the hearing on behalf of the employer.

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 December 6, 2004, to September 5, 2006. She 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 discharge after eight instances of absenteeism.

The claimant's son suffers from asthma, which has caused the claimant to be absent from work for medical appointments and her son's illness. She was absent with proper notice to the employer for those reasons on November 14 and December 9, 2005, and on April 10, April 17, and April 18, 2006. She was late for work on April 27 after a power outage in her town caused her alarm clock to not go off. That evening, the claimant and her roommate received a threat to their personal safety from the roommate's ex-boyfriend. When she reported to work on April 28, she requested permission from her supervisor to leave work during the day to obtain a restraining order against the man. She was informed that if she left, it would be counted against her attendance record. The claimant left work and received a written warning for absenteeism. She was late for work for unknown reasons on August 5 and received a final warning since she was at seven incidents.

The claimant was scheduled to work at 5:00 a.m. on September 5. She started for work at approximately 4:10 a.m., but her car stalled about seven miles from work. She could not get the car started again. She attempted to find someone to give her a ride to work but was initially

unsuccessful. She called and informed the employer at 4:30 a.m. that she would be late for work because her car had broken down. Afterward, she was able to find a friend to help her with her car. He determined the problem was the battery and adjusted the battery cables so the car would start. The claimant got to work at about 6:00 a.m. but after working for a couple of hours, she was discharged by the employer for violating the employer's attendance policy. The car was a 2000 model, and the claimant had not had previous mechanical problems.

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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. 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.

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).

While the employer may have been justified in discharging the claimant under its attendance policy, work-connected misconduct as defined by the unemployment insurance law has not been established. The absences were all properly reported and were for legitimate illness for her son or other reasonable cause. The final incident was clearly an emergency situation over which the claimant had no control. She was unaware of any problems with the car when she set out for work and made reasonable efforts to secure a ride to work. No willful or substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated September 22, 2006, reference 01, is reversed. 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/pjs