

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

HEIDI A GLASSINGER
#2
6011 SW CRESTON AVE
DES MOINES IA 50321

ANNETT HOLDINGS INC
C
/O TALX – EMPLOYERS UNITY
TMC TARNSPORTATION INC
PO BOX 749000
ARVADA CO 80006 9000

Appeal Number: 05A-UI-11591-DWT
OC: 02/13/05 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

TMC Transportation, Inc. (employer) appealed a representative's November 1, 2005 decision (reference 04) that concluded she was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 30, 2005. The claimant participated in the hearing. Rachel Thompson, a representative with TALX, appeared on the employer's behalf. Erin Turnis and Donna Ivins, the billing department supervisor, testified 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 March 17, 2005. The claimant worked as a full-time billing specialist. On August 10, 2005, the employer talked to the claimant about her attendance. From March 17 through August 5, the claimant was absent 75 hours. The employer emphasized that the employer needed the claimant at work and if she was unable to work she needed to provide a doctor's statement to the employer. When the claimant had been absent July 21 through 25, she provided the employer with a doctor's excuse.

The claimant notified the employer she was unable to work as scheduled on September 19 and 20, 2005. The claimant provided a doctor's statement verifying she had been unable to work. When the claimant called the employer, she tried to talk to Ivins. When she was unable to talk to Ivins, she left a message on Ivins' voice message and then contacted a co-worker to report she was unable to work as scheduled.

On October 17, 2005, Ivins was not at work. The claimant called on October 17 and left a message on Ivins' answering machine. The claimant also talked to a co-worker to let the employer know she was unable to work as scheduled. The claimant was unable to work because she had a migraine headache. The claimant saw her doctor on October 17, 2005.

The claimant worked as scheduled on October 18. On October 19 after Ivins returned to work, she decided to discharge the claimant. The claimant had not brought a doctor's statement when she returned to work and Ivins did not ask her for one. The employer discharged the claimant for excessive absenteeism.

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 §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).

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).

The evidence reveals the claimant always contacted either Ivins or a co-worker when she was unable to talk to Ivins to report she was unable to work as scheduled. While the employer's handbook tells employees to contact the human resource department, the employer did not warn the claimant that her job was in jeopardy if she did not contact the human resource department when she was unable to work as scheduled. The claimant acted reasonably when she talked to a co-worker after leaving Ivins a message.

The employer established compelling business reasons for discharging the claimant. The claimant had medical problems, which sometimes prevented her from working. When she was unable to work as scheduled, the claimant notified the employer. Even though the claimant did not provide a doctor's statement to the employer when she returned to work after missing work on October 17, the claimant could have provided a doctor's statement if the employer had given her an opportunity to do so. The claimant's failure to provide a doctor's statement when she returned to work at most amounts to an error in judgment. The facts do not establish that the claimant intentionally or substantially failed to work or follow directions as directed. Instead, the claimant was unable to work on October 17 and forgot about giving the employer a doctor's statement. The claimant did not commit work-connected misconduct. As of October 16, 2005, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers.

DECISION:

The representative's November 1, 2005 decision (reference 04) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 16, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account will not be charged during the claimant's current benefit year.

dlw/s