

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YEN T TRAN
Claimant

APPEAL NO. 09A-UI-17421-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC
Employer

OC: 10/18/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 4, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 30, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with an interpreter, Lan Nguyen. Jennifer Stubbs participated in the hearing on behalf of the employer with a witness, Rick Wood. Exhibits A and One were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a laborer from June 12, 2007, to May 1, 2009. She was informed and understood that under the employer's work rules, employees were required to notify the employer at least 30 minutes before their shift if they were not able to work as scheduled and were subject to discharge for excessive absenteeism after receiving 14 attendance points. The claimant had been warned about absenteeism.

As of April 3, 2009, the claimant had 12 points, which were due to absences for personal illness.

The claimant left work early with notice to the employer on April 30, 2009, due to headaches that caused her to be unable to work. She went to the emergency room and was diagnosed with hypertension. She was referred to a primary care physician for follow up. The claimant was ill and unable to work on May 2, 2009. She notified the employer that she was not able to work. The claimant went to the doctor and was excused from working on May 2, 2009. She was discharged for excessive absenteeism on May 4 because she received 2.5 points for her absences, which put her over the 14-point limit.

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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated November 4, 2009, reference 01, is affirmed. 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