

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

JUSTINA VAZQUEZ
432 S 9TH AVE
WASHINGTON IA 52353

METROGROUP CORP
901 W BOND
LINCOLN NE 68521

Appeal Number: 06A-UI-02079-DWT
OC: 01/15/06 R: 03
Claimant: Appellant (2)

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:

Justina Vazquez (claimant) appealed a representative's February 9, 2006 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Metrogroup Corporation (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 9, 2006. The claimant participated in the hearing. Ike Rocha interpreted the hearing. Cheryl Vaughn, the production 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 claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 27, 2005. The claimant worked as a full-time machine operator.

The claimant received information from Mexico that her mother was very ill. The claimant contacted the employer's human resource department and asked if she could obtain a leave of absence to visit her gravely ill mother in Mexico. The employer granted the claimant a leave of absence from December 17, 2005, through January 8, 2006. The claimant was to return to work on January 9, 2006. Before the claimant went on the leave, the employer told her she needed to bring back a doctor's statement to verify her mother's illness.

In early January, the claimant contacted her daughter, who lived in Iowa, and asked her to call the employer to report that the claimant was unable to report to work by January 9, 2006. The claimant did not want to leave her mother because she was still very ill. The claimant contacted her daughter instead of the employer because the claimant does not speak much English and it was difficult to find a phone to make a call to Iowa. The claimant assumed the employer would give her one more week of leave.

The claimant's daughter contacted the employer on January 5 or 6. The employer understood the daughter called to find out what documentation the claimant needed to provide the employer when she returned to Iowa. The employer had no understanding the claimant wanted or needed more time off. Only the employer's human resource department could extend the claimant's leave of absence.

The claimant returned to work on January 16, 2006, or a week later. The employer informed her she no longer had a job. The employer considered the claimant to have voluntarily terminated her employment as of January 11, 2006, after she failed to report to work or contact the employer for three consecutive days, January 9, 10 and 11.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if a claimant voluntarily quits employment without good cause or an employer discharges her claimant for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The facts indicate the employer discharged the claimant on January 11, 2006.

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 facts do not indicate that prior to requesting a leave of absence, the claimant's job was in jeopardy. The claimant may have used poor judgment when she assumed the employer would give her one more week off from work, but the claimant made a reasonable attempt to inform the employer she was unable to return to work on January 9, 2006. The evidence further establishes that either the claimant's daughter miscommunicated the claimant's intentions or the person she talked to did not understand exactly why the claimant's daughter contacted the employer on January 5 or 6. The facts do not establish whether the employer would have granted the claimant another week of leave.

The production supervisor initiated termination papers in accordance with the employer's policy when she understood the claimant was to report to work on January 9 and did not report to work or contact the employer for three consecutive days. The production supervisor did not know the claimant's daughter had called on January 5 or 6, 2006. The employer established compelling business reasons for discharging the claimant.

The claimant made a reasonable attempt to inform the employer she would not be at work until January 16 and assumed the employer would give her one more week of leave. Under the facts of this case, the claimant did not intentionally or substantially disregard the employer's interest by not returning to work until January 16 instead of January 9, 2006. The claimant did not commit work-connected misconduct. Therefore, as of January 15, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 9, 2006 decision (reference 02) is reversed. The claimant did not voluntarily quit her employment. Instead, the employer discharged her for business reasons that do not constitute work-connected misconduct. As of January 15, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/tjc