

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WENDY ACOSTA
Claimant

KATECHO INC
Employer

APPEAL NO. 14A-UI-09233-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/10/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 27, 2014, reference 01, that concluded she was discharged for work-connected misconduct. A hearing was held on September 30, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. No one 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 as a quality inspector for the employer from December 3, 2012, to August 11, 2014. The claimant was informed and understood that under the employer's work rules, regular attendance was required and an employee could be discharged after receiving seven attendance points in a six-month period.

The claimant had been warned in June 2014 that she had five attendance points. These were mostly due to absences due to illnesses relating to her pregnancy that she later learned could have been covered by leave under the Family and Medical Leave Act (FMLA).

The employer asserted the claimant was a few minutes late on August 6 and August 11, which put the claimant at seven points and discharged her.

The claimant's pay stubs, however, have her punch in times printed on them and show that she reported to work as scheduled on August 6 and August 11.

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. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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).

The unemployment insurance rules provide: "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." 871 IAC 24.32(8).

The evidence fails to show any current act of work-connected misconduct. The employer asserted the claimant was late on August 6 and 11, but the evidence presented by the claimant shows she was on time on those days.

DECISION:

The unemployment insurance decision dated August 27, 2014, 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/css