

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARICE A WILLIAMS
Claimant

APPEAL NO: 07A-UI-10549-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

**OC: 10/14/07 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Qwest Corporation (employer) appealed a representative's November 5, 2007 decision (reference 01) that concluded Charice A. Williams (claimant) 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 December 6, 2007. The claimant participated in the hearing with her subpoenaed witnesses, Don Dawson and Selena Edmondson. Steven Zaks, a representative with Barnett Associates, Inc., appeared on the employer's behalf. Lisa Griffith testified on the employer's behalf and Dan Dare was present and available to testify. During the hearing, Employer Exhibits One through Five were offered and admitted evidence. 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 May 24, 1999. The claimant worked full-time in sales. Griffith became the claimant's supervisor in May 2007.

Since February 2007, the employer documented an attendance problem with the claimant in February 2007 due to her absences from work. After Griffith became the claimant's supervisor, she gave the claimant an amended warning of dismissal on July 16, 2007, which added the issue of tardies. (Employer Exhibit Five.) After receiving the July 16 warning, the claimant worked with union representatives to obtain a medical restriction through the employer. The claimant has a chronic medical condition that requires her to use the restroom immediately and without notice for what can be an extended time. After the union helped the claimant, she obtained a medical need certification that extended the time she could use during the day for restroom breaks. The employer allows employees two 15-minute breaks and 30 minutes for

lunch. The medical need restriction was effective until September 30, 2007. The claimant did not incur any tardies while the medical need restriction was effective.

On October 8, 2007, the claimant was five minutes late for work. As a result of reporting to work late, the employer gave her warning of dismissal for her tardies on October 10, 2007. The warning informed the claimant that she had nine occurrences in a rolling calendar year and the employer's policy considered six tardy occurrences as unsatisfactory. The employer further informed the claimant that if she had any more tardy occurrences before July 9, 2008, she would be discharged. (Employer Exhibit Two.) The claimant had been late for work, because she had to unexpectedly use her bathroom before she came to work.

The claimant saw the employer's physician on October 14. The physician reported that an employer might accommodate the claimant's medical condition with frequent restroom access. The physician confirmed the claimant's need for restroom breaks could be unpredictable.

On October 15, the claimant was ten minutes late from a break. While the claimant had been on a scheduled break, she found it necessary to use to the restroom. As a result, of having to use the restroom, the claimant was ten minutes late. The claimant talked to Griffith when she was late so Griffith knew she had been late and the reason the claimant had returned from her break late.

On October 16, the claimant was eight minutes late for work. The claimant had been late because while she was getting ready for work, she had to use the restroom. As a result, the claimant left her home later than usual and then had to find a parking place when she arrived at work late. On October 17, 2007, the employer discharged the claimant because of repeatedly being late for work as scheduled. (Employer Exhibit One.)

The claimant has no control as to when she needs to use the restroom. If the claimant had gotten up earlier than usual on October 16, she could have been late for work because she has no control as to when she needs to use the restroom. During the course of her employment, the claimant explained to the employer in detail her medical situation.

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 section 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).

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 establishes the claimant had an attendance problem, which the employer had been addressing with her in early 2007. Reporting to work late became a problem in mid-July 2007. As a result of continued attendance issues – reporting to work late – the employer established justifiable business reasons for discharging the claimant on October 17, 2007.

Even though the employer had business reasons for discharging the claimant, the employer must establish that the claimant committed work-connected misconduct before she can be disqualified from receiving unemployment insurance benefits. 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 employer knew about the claimant's medical condition and doctors verified the need for the claimant's frequent, unpredictable restroom breaks. Based on the facts in this case, the claimant established reasonable grounds for being tardy for work or from breaks. The claimant had no control over the situation. The facts do not establish that the claimant committed work-connected misconduct. Therefore, the claimant is qualified to receive unemployment insurance benefits as of October 14, 2007.

DECISION:

The representative's November 5, 2007 decision (reference 01) is affirmed. The employer had justifiable business reasons for discharging the claimant. The claimant, however, did not commit work-connected misconduct. As of October 14, 2007, the claimant is qualified to receive unemployment insurance benefits, provide she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs