

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ESPERANZA GALVAN
Claimant

APPEAL NO. 10A-UI-09827-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 06/06/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 30, 2010, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on August 26, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Nikki Bruno participated in the hearing on behalf of the employer with a witness, Sarah Schneider.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as human resources clerk from November 21, 2005, to June 7, 2010. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination if they reached 10 occurrences, which are assessed for unscheduled absences or tardiness. The claimant had received a level 3 warning on June 1, 2010, because she had received 9.5 occurrences from July 7, 2009, through May 27, 2010. The occurrences were for three absences due to illness properly reported, ten instances of tardiness of a minute or more, and a couple times when she left work early. She knew that if she was late or absent again, she could be discharged.

The claimant lives a few blocks from work. On June 7, 2010, the claimant drove to work at 8:10 a.m., which normally would give her plenty of time to get to work. She was delayed because as she was trying to get in the parking lot, she was stuck between two trucks that were trying to unload at the facility. She went around the block and by the time she parked, walking into the building, and punched in, she was one minute late. Since the one-half point she received put her at ten occurrences, she was immediately discharged.

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 under its attendance policy, 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. She had reasonable grounds to be one minute late so no current act of work-connected misconduct has been shown.

DECISION:

The unemployment insurance decision dated June 30, 2010, 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