IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

HOPE D RODWELL
Claimant

IOWA DEPT OF HUMAN SVCS/GLENWOOD
Employer

APPEAL NO: 11A-UI-08793-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/22/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Iowa Department of Human Services/Glenwood (employer) appealed a representative's June 21, 2011 decision (reference 01) that concluded Hope D. Rodwell (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 27, 2011. The claimant participated in the hearing. Jackie Boudreaux of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Pam Stipe and Amy Hontz. One other witness, Bonnie Farr, was available on behalf of the employer but did not testify. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 30, 2009. She worked full time as a residential treatment worker. Her last day of work was May 24, 2011. The employer suspended her on May 25 and discharged her on May 27, 2011. The reason asserted for the discharge was excessive absenteeism.

The employer has a nine-step attendance policy. Prior to May 24 the claimant had reached the eighth and final step prior to discharge. The occurrences considered as leading to those eight steps were:

Step #	Date	Occurrence reason
Step 1	09/18/10 – 09/19/10	Personal illness.
Step 2	09/24/10	"
Step 3	11/11/10	"
Step 4	12/03/10	"
Step 5	(couple days early Feb. 2011)	"
Step 6	04/30/11 – 05/01/11	"
Step 7	05/08/11 – 05/09/11	"
Step 8	05/12/11	"

On April 21, 2011 the employer had granted the claimant a temporary alternative work schedule so she could attend classes; this was to be reviewed after a 30-day trial period. Her alternative schedule was to work Tuesday through Friday from 5:30 p.m. until 9:30 p.m., and on Saturday, Sunday, and Monday to work from 2:00 p.m. until 10:30 p.m., which were the claimant's normal hours.

Because of reaching Step 8 under the attendance policy after the May 12 absence, on May 23, the claimant's supervisor reviewed the attendance step with her and told her that he was not extending the adjusted work schedule, so that she would need to be at work at 2:00 p.m. on May 24. The claimant said, "Okay."

On May 24 the claimant determined that attending school was more important, and called the employer shortly after noon to advise that she would not be at work until 5:00 p.m. When she arrived at 5:00 p.m. there was further discussion with her expressing concern regarding her attendance. On May 25 the claimant again called and indicated she would not be at work until 5:00 p.m. When she arrived, she was sent home on suspension. After a discussion on May 27, the claimant was discharged for exceeding the employer's attendance provisions.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct

must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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 to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

While the administrative law judge does have some concerns regarding how the claimant conducted herself in her final days of employment, the employer discharged the claimant based solely on the violation of the attendance policy, and the review of the claimant's eligibility must be based solely on that reason. Larson v. Employment Appeal Board, 474 N.W.2d 570 (Iowa 1991). Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); Cosper, supra; Gaborit v. Employment Appeal Board, 734 N.W.2d 554 (Iowa App. 2007). While the final two tardies were not excused, the prior eight occurrences prior were related to properly reported illness and are considered excused. In the context of the total number of occurrences, the two final occurrences do not constitute excessive unexcused absences for purposes of unemployment insurance eligibility. While the employer had a good business reason for discharging the claimant, it has failed to meet its burden to establish misconduct. Cosper, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's June 21, 2011 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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