

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALICIA L FISHER
Claimant

APPEAL NO: 10A-UI-16622-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORP
Employer

OC: 11/07/10
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 30, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge. The claimant participated in the hearing. John O'Fallon represented the employer. April Juarez, the customer service manager, Annie Brown, the lead investigator, and Ramona Mitchell, an account coordinator, testified on the employer's behalf.

The claimant's request to continue the hearing on the day of the hearing so she could have an attorney and witnesses testify on her behalf was denied because the hearing notice was mailed on December 30, 2010, and the claimant did not make a timely request.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in May 1998. The claimant worked as a customer assistance agent. The claimant started going to school in 2008. The claimant went on short-term disability in early October 2009. The employer's policy informs employees that when they are on short-term disability they must inform the employer when they travel, if they are attending school or plan to attend school - even on-line courses. A case manager asks these specific questions and the employer sends approval letters for short-term disability about once a month to employees on short-term disability. These questions are asked each month.

On September 30, 2010, the employer's investigation department received information that the claimant attended school while on short-term disability. In addition to paying her short-term disability benefits, the employer also pays tuition for the on-line classes the claimant has taken since December 2009. As a result of her caseload, Brown was unable to investigate this information right away. After she verified the claimant's classes and the benefits the claimant

received, Brown talked to the claimant on October 26, 2010. The claimant acknowledged she went to school while receiving short-term disability benefits. Although the claimant asserted she told her case manager in early January 2010, that she was planning to return to school, the recorded conversation does not verify that the claimant reported this to her case manager. The employer does not have a doctor's note stating the claimant could take classes and return to school.

On November 10, 2010, the employer discharged the claimant for violating the employer's policy when she failed to advise and obtain approval to go to school while receiving short-term disability benefits.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting a current act of work-connected misconduct. Iowa Code § 96.5(2)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).

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).

Although the claimant asserted she told the case manager in early January she was going to school or intended to attend school again, Brown listened to a recording of that conversation and this was not recorded. The claimant asserted she reported this to the case manager when her cell phone went dead. Since the employer repeatedly asks employees receiving short-term disability benefits if they attend school or plan to attend school, the claimant did not act reasonably when she failed to make sure her case manager knew the claimant was going to school. The claimant took new classes in different semesters or quarters of on-line classes. Again she had the affirmative duty to report she was taking on-line classes each time she signed up for new classes, but did not. Since the employer does not have a record of the claimant's physician releasing her to attend school, or that attending school would even be beneficial to the claimant, the claimant's credibility is at issue.

The evidence establishes the claimant did not inform the employer she was taking on-line classes while she received short-term disability benefits from the employer. The evidence also reveals that even though the employer knew or highly suspected that the claimant attended school while receiving short-term disability benefits on September 30, the employer but did not talk to the claimant until October 26 to let her know she was being investigated. The employer did not discharge her until November 10, 2010. Based on the employer's failure to timely inform the claimant she was being investigated or put on notice that her job was in jeopardy, the employer did not establish that the claimant committed a **current** act of work-connected misconduct. If the employer would have put the claimant on notice in early October that she was being investigated, the outcome of this decision may have been different.

DECISION:

The representative's November 30, 2010 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute a current act of work-connected misconduct. As of November 7, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css