

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ROXANE K FRANCIS
331½ - 12TH ST SE
MASON CITY IA 50401**

**DELL OIL LTD
5166 NW 111TH DR
GRIMES IA 50111**

**Appeal Number: 04A-UI-12151-DWT
OC: 10/17/04 R: 02
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Dell Oil Limited (employer) appealed a representative's November 3, 2004 decision (reference 01) that concluded Roxane K. Francis (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, 2004. The claimant participated in the hearing. Tim Larson, the director of operations, appeared on the employer's behalf. 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 November 17, 2003. She worked as a full-time cashier. Jeremy Miller, the station manager, was the claimant's supervisor.

On August 12, 2004, the claimant did not report to work or notify the employer she was unable to work as scheduled. On August 14, the employer gave the claimant a written warning for the August 12 incident. The employer warned the claimant that if she had any more no-call/no-show incidents the employer would consider her to have voluntarily quit her employment.

On October 2, 2004, the claimant called to let the employer know she was ill and unable to work. The claimant indicated she had a doctor's statement that restricted her from working until October 7. On October 7, the claimant called the employer again. This time the claimant reported her doctor would not release her to work until October 11. The claimant had some tests done on October 7 and she would not know until October 8 if she had pneumonia. The employer told the claimant she would be scheduled to work on October 12.

On October 9, the claimant talked to Miller when she picked up her check. The claimant told Miller she had pneumonia and her doctor would not release her to work until October 18. The claimant indicated she had doctor's excuse for the time she had already missed and would bring it in on Monday, if Miller wanted her to. The claimant understood Miller did not need the doctor's excuse right away and just asked the claimant to keep him informed.

The claimant did not give the employer a doctor's excuse on Monday, October 11. The claimant did not report to work on October 12. When the claimant did not report to work or contact the employer on October 11 or 12, the employer terminated the claimant's employment and removed her name from the schedule.

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 §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).

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 presented hearsay information or relied on a written statement from Miller who did not participate at the hearing. The claimant's testimony is credible and her testimony must be given more weight than the employer's reliance on hearsay information. Therefore, the facts establish the claimant told Miller on October 9 her doctor would not release her to return to work until October 18.

The employer may have had business reasons for discharging the claimant. The evidence indicates a communication problems occurred on October 9 when the claimant talked to Miller. Even though Miller did not understand the claimant was restricted from working on October 12, the fact the claimant's doctor would not release her to work until October 18 establishes the claimant was unable to work as scheduled on October 12. The claimant did not intentionally disregard the employer's interests when she did not report to work on October 12, 2004. The claimant did not commit work-connected misconduct and is qualified to receive unemployment insurance benefits as of October 17, 2004.

DECISION:

The representative's November 3, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of October 17, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/tjc