IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KARLA E VERDINEZ
Claimant

SWIFT & COMPANY
Employer

APPEAL NO: 09A-UI-17144-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/11/09
Claimant: Respondent (1)

Section 96.5-2- a- Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's October 30, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on December 18, 2009. The claimant participated in the hearing. Tonya Box, a human resource assistant, 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 May 18, 2009. The claimant worked as a full-time laborer. The claimant understood the employer would discharge an employee if the employee accumulated ten attendance points in a rolling calendar year.

As of October 5, the claimant had accumulated 7.5 attendance points. Two of these points occurred when the claimant did not call or report to work on September 8 and 9. The claimant received a written warning when she did not call or report to work these days.

On October 6, the claimant reported to work but became ill at work. When the claimant went home early, she understood the employer would only assess half a point. Instead, the employer assessed her one attendance point for leaving work early. As of October 6, the claimant had accumulated 8.5 points.

On October 7, the claimant was ill and unable to work. The claimant came to work and talked to a union representative because she was worried about how her absences would affect her continued employment. The employer does not have a record that on October 7 the claimant called in or talked to anyone in the human resource department. The employer gave her one point for the October 7 absence. The claimant called in on October 8 and 9 to report she was ill.

The employer's record does not indicate the claimant called or reported to work on October 12. The claimant went to work on October 12 or 13 and gave the employer a doctor's statement verifying she was ill and unable to work October 7 through 12. A human resource representative told the claimant she had already pointed out and no longer worked for the employer. The employer completed paperwork on October 14 that the claimant no longer worked for the employer because of excessive absenteeism. The employer recorded that the claimant had not called or reported to work on October 12, 13 and 14, 2009.

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).

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). 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 claimant's testimony that she talked to a human resource representative on October 7 and went to work on October 12 or 13 must be given more weight than the employer's reliance on hearsay information generated from a report prepared by someone else. The fact the claimant went to the union office to find out if her illness would jeopardize her job is not disputed. It would be illogical for the claimant to go to just the union office on October 7 as the employer asserted. The fact the employer had a doctor's statement verifying the claimant had been ill and unable to work from October 7 through 12 supports the claimant's testimony that she went back to work no later than October 13 and provided the employer with a doctor's excuse for her September 7 through 12 absences. At that time she no longer had a job because she had too many attendance points. Based on a preponderance of the credible evidence, the claimant properly notified the employer of her recent absences. The claimant did not intentionally fail to work as scheduled. Instead, she was unable to work because she was ill. The evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of October 11, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's October 30, 2009 decision (reference 01) is affirmed. The employer established business reasons for discharging the claimant. The claimant, however, did not commit work-connected misconduct. As of October 11, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs