

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE R KASPER
Claimant

APPEAL NO: 11A-UI-13378-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTAR FOODS INC
Employer

OC: 09/04/11
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 30, 2011 determination (reference 02) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. John Kelchen, the district manager, appeared on the employer's behalf.

Although the hearing notice indicated one of the issues to be addressed was the timeliness of the claimant's appeal, the claimant filed a timely appeal by faxing her appeal on October 10, the last day to file a timely appeal. The Appeals Section incorrectly added this issue even though the claimant had filed a timely appeal. As a result, there is no timeliness of appeal issue to address in this case.

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 worked for the employer June 2010 through August 2010. The employer rehired her in November 2010 as a full-time shift leader.

During her most recent employment, the claimant worked at two locations. She failed two times at each location to open the store on time. In early 2011, the claimant received a written warning for not opening a store on time. The claimant did not open the store on time in early 2011 because she overslept and lived 45 minutes from work.

In late July or early August 2011, the claimant had not opened a store on time because the other manager was not at the store on time. The employer required two managers to be present when the store opened. When the employer talked to the claimant in late July or early August, the claimant understood if she again opened a store late, she would be suspended or would no longer be scheduled to open stores.

On August 29, the claimant did not feel well, but thought she would be able to get up and open the store as scheduled the next day. The claimant overslept on August 30. An employee called her between 5:15 and 5:20 a.m. to find out if there was a problem. The claimant was scheduled to be at work at 5 a.m. so the store would open at 6 a.m. The claimant told the employee she was ill and unable to work. On August 30, 2011, the employer discharged the claimant for again failing to open up a store on time.

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 employer entrusted the claimant with a great deal of responsibility – making sure the employer's store opened on time. The claimant acknowledged she should have contacted the night manager on August 29 to report she was ill and may not be able to open the store the next morning. The claimant understood she would be disciplined if she again did not open a store on time. Since the claimant made the decision to go to work on August 30, her failure to report to work on time amounts to an intentional and substantial disregard of the employer's interests. This is especially true when she had been warned about the same problem less than a month before she was discharged. Since the claimant accepted a job with a great deal of responsibility, she committed work-connected misconduct when, for the fourth time, she did not open a store on time.

DECISION:

The representative's September 30, 2011 determination (reference 02) is affirmed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 4, 2011. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw