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

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ADVANCE BRANDS LLC
ATTN BECKY WESTER
101 – 14TH ST SE WAY
ORANGE CITY IA 51041

Appeal Number: 06A-UI-03046-SWT
OC: 02/05/06 R: 01
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 is 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:

The employer appealed an unemployment insurance decision dated March 6, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 6, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Ike Rocha. Becky Wester participated in the hearing on behalf of the employer. Exhibits One and A were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from April 6, 2005, to February 2, 2006. She was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination if their attendance points reached zero. Employees start with 30

points, receive 30 points after 60 days on the job, receive 10 points after 90 days on the job, receive 10 points for 30 days of perfect attendance, and receive one point for working on an unscheduled day. Employees have 10 points deducted for an unscheduled absence (or consecutive days of absence due to illness), 8 points deducted if they work less than 50 percent of their shift, and 5 points deducted if they work less than 100 percent but 50 percent or more of their work shift. As of July 4, 2005, she had 104 attendance points. On December 2, 2005, she had 10 points added for 30 days of perfect attendance, and a total of 18 points was added for working unscheduled days.

The claimant had 10 points deducted for absences due to illness on July 22 and 23, 2005. She had 20 points deducted for absences due to illness on August 1 and 29 and 5 points for missing part of a shift on August 18. She had 20 points deducted for absences due to illness on September 12 and 20 to 21 and 10 points for an absence due to vehicle problems on September 26. She had 20 points deducted for absences due to illness on October 10 and 28 and 5 points for missing part of her shift on October 20. She had 10 points deducted when she stayed home with her daughter who was ill on November 2. She had 10 points deducted for an absence for an unknown reason on December 16 and 5 points deducted for leaving work early on December 19. She had 5 points deducted for leaving work early on January 16, 2006, and 10 points deducted for being absent due to illness supported by a doctor's excuse on January 18, 19, and 20.

The claimant received a written warning for excessive absenteeism on January 3, 2006, because she was at 16 points. She received two written warnings on January 31 for being at 12 points after she left work early on January 16 and for being at 2 points after she was absent from work January 18 to 20.

The claimant's mother from Honduras was visiting the claimant under a visitor's visa in January 2006. In early February 2006, the visa was about to expire. She and her mother personally lacked the money needed to pay for a plane ticket for her mother to return to Honduras. Arrangements were made for the father of her child, who lives in Los Angeles and works for Continental Airlines, to travel to Omaha to make the travel plans for the claimant's mother and pay for her airline ticket. The claimant needed to drive her mother to Omaha on the afternoon of February 2, 2006, to obtain her airline ticket so she could leave before her visa expired.

The claimant was scheduled to work on February 2 from 6:33 a.m. to 3:33 p.m. When she reported to work that morning she asked her supervisor and the human resources assistant manager if she could leave work early because of the situation with her mother needing to fly out back to Honduras before her visa expired. Her supervisor and the human resources assistant manager denied the request and told her that her employment would be terminated if she left work early because she would receive a five point deduction, which would reduce her points below zero. There was no one else who could drive her mother to Omaha so she told her supervisor that she had to leave before her shift ended. She was again told that she would be terminated under the employer's attendance policy if she left. The claimant left work at about 12:30 p.m. She was terminated under the employer's no fault attendance policy for being below zero points.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Iowa Code section 96.5-2-a provides:

> An individual shall be disqualified for benefits:
>
> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
>
> a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a, (7) provide:

> Discharge for misconduct.
>
> (1) Definition.
>
> a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

> (7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

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 substantial and 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).

While the employer may have been justified in discharging the claimant under its policy, work-connected misconduct as defined by the unemployment insurance law has not been established. Nearly all of the claimant's points were for absences due to illness, either her own illness or illness of a family member and were properly reported. The final absence was due to an emergency situation about which she notified the employer and requested permission to leave work early. No willful or substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated March 6, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/tjc