

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA FLOURNOY
Claimant

APPEAL NO: 10A-UI-08268-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC
Employer

OC: 05/16/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's June 4, 2010 decision (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. A telephone hearing was held on July 27, 2010. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the arguments of the claimant, 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 in April 2009. She worked as a full-time case picker. The claimant understood the employer's attendance allowed employees to accumulate ten points before the employer would discharge an employee for excessive absenteeism. The claimant understood from other employees that if an employee brought in a doctor's statement for an absence, the employer still gave the employee an attendance point.

In August 2009, the claimant was injured at work. When the claimant returned to work in December 2009, she still experienced pain. When the claimant had too much pain to sleep or to work, she notified the employer she was unable to work. The claimant went to her doctor who told her to take her medication, which the claimant considered strong.

When the claimant had accumulated eight attendance points, her supervisor talked to her and told her how many points she had accumulated. The claimant accumulated 10.5 points by mid-May 2010. The claimant received the majority of the points when she was unable to work due to the pain she experienced from the injury at work. The employer discharged the claimant because she had accumulated more than ten attendance points.

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).

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).

Based on the evidence presented during the hearing, the employer had business reasons for discharging the claimant. The facts do not, however, establish that she committed work-connected misconduct. The evidence indicates that when the claimant was absent she properly reported her absence to the employer. When she was absent she was unable to work or there were other reasonable grounds for her absence. As of May 16, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's June 4, 2010 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of May 16, 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