

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CECILA GONZALEZ
Claimant

APPEAL NO. 08A-UI-07203-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

**OC: 06/15/08 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 29, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 25, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of interpreter, Ike Rocha. Sarah Schneider participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from May 14, 2008, to June 13, 2008. 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 would be considered to have quit if they were absent from work without notice to the employer.

The claimant was absent due to legitimate medical reasons on June 16, 2008. Due to flooding in southeastern Iowa, the claimant could not drive the normal route to work and had to go from Columbus through the Iowa City to get to work in West Liberty, which involved traveling substantially more miles. The claimant called the employer on June 17, 2008, and informed a supervisor that she would not be at work due to not having the money for gas to get to work.

On June 18, 2008, the claimant called the supervisor again stating that she would not be at work because she did not have the money for gas to get to work. The supervisor stated that the employer did not want her to return to work. She suggested that the claimant reapply in three months after her situation was stable again.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated July 29, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css