

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRINA M DURNIN
Claimant

APPEAL NO. 08A-UI-06454-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GMAC MORTGAGE CORPORATION
Employer

**OC: 06/01/08 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Trina M. Durnin (claimant) appealed a representative's July 9, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from GMAC Mortgage Corporation of Pennsylvania (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 29, 2008. The claimant participated in the hearing. Steven Zaks of Barnett Associates appeared on the employer's behalf and presented testimony from three witnesses, Denise Shoultz, Leslie Schaver, and Gina Muniz. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 26, 2005. Since about August 2007, she worked part time (20 hours per week) as a customer care representative in the employer's Waterloo, Iowa, mortgage service center. Prior to May 12 her schedule had been daytimes on Tuesdays and Wednesdays, 10 hours per day. On or about April 16 she requested that as of May 12 her schedule be changed to 5:00 p.m. to 9:00 p.m., Monday through Friday, and the employer implemented the schedule change as requested. The request for the schedule change was because the claimant was anticipating the beginning of summer classes, which went during the day time Monday through Friday. The claimant's last day of work was May 20, 2008. The employer discharged her on June 5, 2008. The reason asserted for the discharge was excessive absenteeism.

The claimant missed two days in early May under her prior schedule due to a health issue related to her daughter. After the new schedule went into effect on May 12, the claimant was absent on May 13, May 14, May 16, and May 19. She returned and worked on May 20, and received an e-mail warning for her missing work from her team leader, Ms. Shoultz. Ms. Shoultz indicated that the claimant's absence from work was causing concern, and she

indicated she wanted the claimant to come in before 5:00 p.m. some day so that they could discuss the problem. The claimant responded that she could not come in before 5:00 p.m. for any discussion, but that she would try to get to work. She indicated that the reason she was missing work was because as of about May 12 her husband had begun to be assigned overtime work in his employment, and the claimant did not have other arrangements for evening childcare.

The claimant was then absent on May 21, May 22, May 23, May 27, May 28, May 29, May 30, June 1, June 2, June 3, and June 4. She called in each day indicating her husband's overtime and her lack of evening childcare as the reason for her absences. Ms. Shultz called and left messages for the claimant to call her on several of those days; on June 4 she did make contact by phone with the claimant. She advised the claimant that she had been missing too much work and that if she were not at work on June 5 as scheduled, she would be removed from her employment; the claimant agreed that she would try to be at work as scheduled on June 5.

On June 5, the claimant did not report for work at 5:00 p.m. At approximately that time she called and left a message on the employer's attendance system indicating that she would be in late, at approximately 6:00 p.m. She did not arrive at work until 6:45 p.m. The reason she had not arrived to work as scheduled was again due to her husband working overtime and not having evening childcare. The employer then discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). Absences due to issues that are of purely personal responsibility such as suitable childcare arrangements are not excusable. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984); Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The claimant's final absence was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned

that future absences could result in termination. Higgins, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's July 9, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 5, 2008. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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