

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LILLIE M WILSON
Claimant

APPEAL NO: 07A-UI-04318-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUFFALOCODY LLC
Employer

OC: 04/08/07 R: 03
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Lillie M. Wilson (claimant) appealed a representative's April 25, 2007 (reference 01) decision that disqualified her from receiving unemployment insurance benefits and held the account of Ruffalocody LLC (employer) was not subject to charge because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 15, 2007. The claimant participated in the hearing. Melanie Light, Brenda Teems-Wiese and Melanie Hundertmark appeared on the employer's behalf. 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:

Did the claimant voluntarily quit her employment for reasons that disqualify her from receiving unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 15, 2005. The claimant usually worked 10:00 pm. to 4:00 a.m. The claimant does not have a car and made arrangements for MTS to transport her to work and back to her residence. On Sunday, MTS did not pick up the claimant for work. The claimant contacted Teems-Wiese and she picked up the claimant and took her to work. The claimant learned MTS scheduled to pick up the claimant at midnight, instead of 4:00 a.m. The employer told the claimant to do what she could. When Teems-Wiese picked up the claimant, the claimant did not feel well. The employer did not realize the claimant did not feel well on March 25.

The claimant left work at midnight. MTS did not take the claimant to her residence. The claimant had to walk to the house where she was staying. The house was locked and the claimant could not get in. The claimant walked around all night.

The claimant had 50 cents and called the employer from a payphone on March 26 to report that she did not know if would be at work that night. The claimant left a message explaining that she had been locked out of the house she was staying and had been out all night. The claimant did not tell the employer she was not feeling well when she left the message on March 26. The claimant did not feel well the night of March 26 and did not report to work. The claimant did not report to work or call or notify the employer on March 27, 28 or 29. The claimant did not have money to call the employer. The people the clamant stayed with did not have a phone.

On Wednesday, March 28, a volunteer took the claimant to her doctor. The doctor sent the claimant to the hospital for a test. The claimant understood she had sinus problems, bronchitis and low potassium. The claimant understood she could return to work on Friday, March 30, or Monday. The claimant did not think about calling the employer or having the doctor's office contact the employer on March 28.

The claimant went to the employer's business on March 31 to pick up her paycheck. The clamant did not have a doctor's excuse with her on March 30, 2007. When the claimant went to pick up her check, the employer had already considered her to have voluntarily quit her employment because she had not called or reported to work for three consecutive days. The employer's policy informs employees that if they have three consecutive days of not reporting to work or contacting the employer, the employer considered the employee to have abandoned their employment. As of March 29, the employer no longer considered the claimant an employee because she had not reported to work or contacted the employer for three consecutive days. The claimant understood the employer required employees to notify the employer when they were unable to work as scheduled. Prior to March 25, the claimant had a cell phone and called the employer when she was unable to work as scheduled.

The claimant obtained a medical statement on April 4 indicating she had been ill and unable to work March 26 through 29, 2007.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. The evidence does not indicate that the claimant intended to quit her employment. Instead, the employer discharged her when she did not report to work or contact the employer for three consecutive days.

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 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).

The employer established business reasons for discharging the claimant. Since the evidence does not indicate the claimant had an attendance problem and she had called in before when she was ill and unable to work, the claimant's failure to contact the employer this time does not amount to work-connected misconduct. Unfortunately, the claimant did not have a phone and the people she stayed with did not have a phone. The claimant used poor judgment when she failed to have her doctor's office contact the employer on Wednesday, March 28, when she was there for an appointment. Since the doctor's statement verifies the claimant was ill and unable to work March 26 through 29, it is understandable how the claimant could forget about asking her doctor's office to contact the employer. While the claimant used poor judgment when she failed to contact the employer for three consecutive days, she was ill and unable to work. Under these facts, the claimant did not commit work-connected misconduct. The claimant is qualified to receive unemployment insurance benefits as of April 8, 2007.

DECISION:

The representative's April 25, 2007 decision (reference 01) is reversed. The claimant did not voluntarily quit her employment. Instead the employer discharged her for reasons that do not constitute work-connected misconduct. As of April 8, 2007, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefit paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs