

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALYSSA B GOODWIN
Claimant

APPEAL NO: 19A-UI-04241-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAFELITE SOLUTIONS LLC
Employer

OC: 04/21/19

Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Safelite Solutions LLC filed a timely appeal from a representative's unemployment insurance decision dated May 16, 2019, (reference 01) which held claimant eligible for unemployment insurance benefits, finding that the claimant was dismissed from work on February 21, 2019 for excessive absences but found that the illnesses were due to illness and were properly reported and did not constitute work-connected misconduct. After due notice was provided, a telephone hearing was held on June 19, 2019. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Mr. Trenton Kilpatrick, Hearing Representative and witness Ms. Carolyn Kennedy, leave of absence coordinator. Employer's Exhibits 1 through 4 were admitted into the hearing record.

ISSUES:

The issue is whether the claimant was discharged from employment for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

The second issue is whether the claimant has been overpaid unemployment insurance benefits.

The third issue is if the claimant has been overpaid, is the claimant liable to repay that amount or should the employer's account be charged based upon the employer's participation in the fact-finding interview?

FINDINGS OF FACT:

Having heard the testimony of the witness and having considered all of the evidence in the record, the administrative law judge finds: Alyssa Goodwin began employment with Safelite Solutions, LLC on May 23, 2016 and was employed as a full-time customer service representative and was paid by the hour.

Ms. Goodwin was separated from her employment with Safelite Solutions, LLC by letter dated February 21, 2019 because she had not responded to repeated requests from the company for medical information supporting her need to be absent from work for an extended period, and to provide medical documentation to support a medical leave of absence.

Ms. Goodwin had last reported for work at the Safelite Solutions Company December 31, 2018. Company policy provides that when an employee has been absent for eight or more consecutive work days, the company will request medical information from the employee and the employee's physician to document the medical reasons for the absences and to help determine eligibility for coverage under the provisions of the Family Medical Leave Act (FMLA). An employee who complies with the requests and supplies sufficient medical documentation is then placed on a medical leave of absence and is under the protection of the Family Medical Leave Act. Employees who fail to provide the requested information regarding their medical condition are subject to the company's regular attendance rules and subject to discharge if their absences from work are unexcused and excessive.

On January 10, 2019 a request for medical leave had been received from the claimant and the claimant was sent a notice of potential eligibility for medical leave provided that there was certification and approval before her medical leave would be authorized. Ms. Goodwin was instructed to have her healthcare provider complete a medical questionnaire form and to return it within 15 days and that her failure to do so could result in a delay or denial of the request. Although the claimant had already provided the questionnaires and diagnosis completed by herself and her physician, the employer received no response. On February 7, 2019, Ms. Goodwin was sent a letter by the company informing her that the employer had not received the response and without protection under the Family and Medical Leave Act, her absences were not protected and she was subject to discharge under her department's regular attendance policy. When the claimant was given another certification of health provider form to have her physician complete, Ms. Goodwin was given seven days from the date of the letter to provide the required information. The employer also offered her a telephone number for assistance and questions. After the employer again received no responses from Ms. Goodwin or her medical practitioners, the claimant was sent two letters on February 21, 2019. The first of the two letters informed the claimant that because she had not provided the required medical documentation, her request for protection under the Family and Medical Leave Act had not been approved. The second of the letters informed the claimant that because there had been no response to the two certified letters that had been sent to her for medical information, she was being discharged from employment.

The employer concluded that because Ms. Goodwin had not supplied the requested medical information supporting her need to be absent, claimant's absences were unexcused and excessive. Ms. Goodwin had not reported back for work since December 31, 2018.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes work-connected misconduct on the part of the claimant sufficient to warrant the denial of job insurance benefits. It does.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(1)a provides:

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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant is not qualified to receive unemployment insurance benefits if an employer discharges the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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 and culpability. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

In the case at hand, the claimant had been excessively absent from her job and had last reported for work on December 31, 2018. Under established company policy, when an employee is absent for eight consecutive work days because of illness, the employee is expected to either return to work the ninth work day, or provide medical documentation to the company supporting the employee's need to be absent and/or supporting the employee's need for protection under the Family and Medical Leave Act.

In this matter, the employer made repeated attempts to get Ms. Goodwin to supply medical documentation supporting her need to continue to be absent, but Ms. Goodwin did not respond and no medical documentation was supplied to the company. The claimant had been placed on notice that her employment would be terminated if the requests for medical documentation had not been complied with. Claimant had last reported for scheduled work on December 31, 2018 but her discharge was delayed until February 21, 2019. Claimant had been warned that if she continued to be absent without medical documentation, the continued absences would count against her employment record and could result in a discharge from employment. The employer's witness asserted that the company records also indicate the claimant had not been properly calling off work each day.

The employer's witness participated personally, provided sworn testimony, although duly notified of the scheduled hearing in this matter, the claimant did not respond to the notice of hearing and did not participate. There being no evidence to the contrary, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that

Ms. Goodwin was discharged because she had been excessively absent and had not provided any medical documentation to support her need to be absent. Accordingly, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects the claimant has received unemployment benefits in the amount of \$3,120.00 since filing a claim with an effective date of April 21, 2019 for the benefit weeks ending April 27, 2019 through June 15, 2019. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a first-hand witness available for rebuttal.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the fact-finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

DECISION:

The representative's unemployment insurance decision dated May 16, 2019, reference 01 is reversed. Claimant was discharged for work-connected misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. Claimant has been overpaid unemployment insurance benefits in the amount of \$3,120.00. The claimant is not liable to repay this amount and the employer's account shall be charged based upon the employer's failure to participate in the fact-finding interview.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn