

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DIANA L HAACK
Claimant

APPEAL NO: 18A-UI-11142-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 10/21/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 6, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 30, 2018. The claimant participated in the hearing. Rebecca Olson, Director of Benefits and Ray Haas, Human Resources Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time coding representative for The University of Iowa from June 16, 2014 to October 15, 2018. She was discharged for an unapproved, unpaid leave of absence.

On August 24, 2018, the claimant fell down her steps at home, injured her back, and called in to report she would be absent. She continued to call the employer and state she would be absent. On September 7, 2018, she began unpaid, non-FMLA leave because she exhausted her sick leave and vacation time. Also on September 7, 2018, the employer sent the claimant a notice of eligibility for FMLA and told her she had until September 22, 2018, to submit the information. On September 21, 2018, the employer's leave administrator received information from the claimant's chiropractor that the employer deemed insufficient to be designated as FMLA. The leave administrator sent the claimant notice indicating further clarifying information was needed by September 28, 2018, but the claimant's medical provider never sent further information. On September 24, 2018, the claimant was released to return to work following her back injury.

On September 25, 2018, the claimant called the attendance line and stated there was a death in her family and she would be gone three to four days. The employer questioned the claimant about her claim of bereavement leave as her boyfriend's grandfather was not covered by the employer's bereavement leave policy. On September 28, 2018, the claimant did not call to

report her absence. On September 30, 2018, she called the attendance line and stated she would not be in October 1, 2018, because she had doctor's appointments. On October 2, 2018, the claimant called and stated she would not be at work but did not supply a reason for her absence. The employer sent her a letter stating it had sent her a health certification for FMLA that required additional information but the employer did not receive further information. The letter noted that the claimant's leave was unauthorized since September 7, 2018, because unpaid time off needs to be approved in advance. The letter concluded by stating the claimant needed to report to the employer October 5, 2018, or the employer would conclude she resigned her position. The claimant failed to report October 5, 2018, and the employer sent her a letter October 15, 2018, notifying her of her dismissal from employment due to excessive unplanned absences and failure to request an unpaid leave of absence in advance. The letter deemed the separation date to be September 7, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant suffered an injury at home August 24, 2018, and the employer provided her with FMLA paperwork. The documents submitted by the claimant's chiropractor were found to be insufficient and the employer notified the claimant further clarifying information was required by September 28, 2018, but the employer never received any other documentation. While there may have been a miscommunication between the claimant and her chiropractor about the required paperwork for her back injury, the claimant was released to return to work September 24, 2018, but did not return at that time. The claimant testified she was being treated by her primary care physician for anxiety and depression after being released from her back injury but the claimant did not communicate that information to the employer. She did not provide any medical documentation either in the form of doctor's notes or updated FMLA paperwork and was not being covered by FMLA between September 24 and October 15, 2018. She exhausted her sick leave and vacation September 7, 2018, and did not request an unpaid leave of absence. It is not unreasonable for the employer to expect some medical documentation from an employee who has been absent over seven weeks.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The November 6, 2018, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn