

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHIE EDFORS
Claimant

APPEAL NO: 16A-UI-09160-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COVENANT CARE MIDWEST INC
Employer

OC: 07/24/16
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 11, 2016, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 9, 2016. The claimant participated in the hearing. Leann Schrader, Assistant Business Office Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three and Claimant's Exhibit A were admitted into evidence.

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 CNA for Covenant Care Midwest from September 18, 2015 to May 19, 2016. She was discharged after her medical leave of absence expired.

The claimant was experiencing complications from pregnancy, went into preterm labor at work April 1, 2016, and was hospitalized. Her doctor excused her from work for two weeks and the claimant informed the employer of her situation. On April 4, 2016, the claimant requested and was granted a 30-day medical leave of absence. On April 18, 2016, the claimant's physician placed her on light duty and stated she could return to work April 19, 2016, with restrictions but the employer could not accommodate her request for light duty work. On April 27, 2016, the claimant's physician sent the employer all of the paperwork regarding the claimant's absence, including a statement that said the probable duration of her absence would be six to 12 weeks, if she could not work light duty. Under the employer's policy, employees must request another leave of absence every 30 days. The claimant believed her medical documentation excused her absence and was not aware she needed to contact the employer by May 4, 2016, for an additional leave. Because the claimant was able and available for work with an accommodation of no patient transfers without help and a required 30-minute break after four hours of work, and the employer would not accommodate her restrictions and removed her from the schedule the claimant began applying for other positions within the community. On April 27 or 28, 2016, the

claimant contacted the employer to ask if the employer had any PRN work available and the employer stated it did not. The employer's open enrollment benefit period started in May 2016, and the employer contacted the claimant for that reason around May 17, 2016. It terminated the claimant's employment May 19, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proving disqualifying misconduct. 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).

The claimant did not voluntarily leave her employment but was terminated by the employer. While the employer's policy requires employees to complete new medical leave of absence paperwork every 30 days, the claimant was not familiar with the policy and testified she actually received a different policy that did not contain that information. Additionally, complicating the matter, she had doctor's notes excusing her from work for six to 12 weeks that she provided to the employer April 27, 2016. Although the claimant did apply for other work in April or May 2016, she did so because the employer took her off the schedule and would not accommodate her work restrictions.

Finally, according to the employer's testimony, despite the claimant's failure to complete additional paperwork to extend her medical leave of absence which was due May 4, 2016, the employer did not notify the claimant her employment was terminated until May 19, 2016. The employer stated she was busy with other duties but informing an employee of a change in her job status is a fundamental duty of an employer and should be given due weight and consideration inasmuch as the magnitude of the effect it has on an employee. Consequently, the claimant's neglect of the required paperwork May 4, 2016, was not a current act of misconduct.

Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving the claimant's actions rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The August 11, 2016, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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