

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANICE E CUMMINGS
Claimant

APPEAL NO. 14A-UI-07948-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

OC: 07/06/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

HCM (employer) appealed a representative's July 25, 2014, decision (reference 01) that concluded Janice Cummings (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 25, 2014. The claimant participated personally. The employer participated by Elizabeth Stapleton, Housekeeping/Laundry Supervisor, and Greg Greenwood Administrator. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 19, 2011, as a full-time housekeeper. The claimant signed for receipt of the employer's handbook on April 19, 2011. The claimant always worked Monday through Friday, with every other Monday and Friday off. The schedule had been the same since she was hired in 2011. On June 10, 2014, the employer issued the claimant a written warning for absenteeism. The claimant properly reported two absences for medical issues. The employer reported the claimant tardy five times but the claimant was not tardy. The employer changed the claimant's work time without notice. On the written warning the employer wrote that further infractions could result in termination from employment but the employer did not give the claimant a copy of the warning. The claimant was unaware she could be terminated for further infractions.

The claimant requested and was granted vacation from July 3 through July 6, 2014. Monday, July 7, 2014, was her regularly scheduled day off. The claimant returned to work on July 8, 2014. The employer told her she was supposed to have been at work on July 7, 2014. The employer considered her to have overstayed her leave of absence without approval and was terminated as of July 8, 2014.

The claimant filed for unemployment insurance benefits with an effective date of June 29, 2014. The employer is unaware of any participation at the fact-finding interview on July 24, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 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).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was terminated for not appearing for work on her regularly scheduled day off, Monday, July 8, 2014. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The claimant's and the employer's testimony is inconsistent with regard to whether the employer communicated the request for the claimant to work on her day off. The administrative law judge finds the claimant's testimony to be more credible. The employer's testimony is that the

claimant's schedule was altered only one time since 2011. This is a change that would be monumental and remembered if it were communicated.

DECISION:

The representative's July 25, 2014, decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css