

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**HORATIO GILBERT**  
Claimant

**APPEAL NO: 20A-UI-11184-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNISON SOLUTIONS INC**  
Employer

**OC: 02/09/20**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 8, 2020, reference 01, 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 October 28, 2020. The claimant participated in the hearing. Brenda Ries, Office Supervisor; Nick Hauk, Operations Manager; and Dave Broihan, Owner, 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 shop technician for Unison Solutions from January 7, 2019 to June 26, 2019. He was discharged for leaving and failing to report his absences.

On June 21, 2019, the claimant went to Supervisor Kirk Peterson and told him his mother-in-law was in a coma in a Florida hospital and he had to leave. Mr. Peterson told the claimant if he left his employment he would be terminated, but the claimant thought he was joking because that was the nature of their relationship. The claimant left and went to Florida and was gone June 24, June 25 and June 26, 2019. He did not call the employer those three days because he believed the employer was aware he was in Florida because of his mother-in-law. When he returned June 26 or June 27, 2019, he reported for work at 5:00 a.m. and Mr. Peterson sent him home telling him he no longer had a job because of the no-call no-show absences.

The claimant believed he did not have to call in each day because when his father-in-law died in Florida earlier he notified Mr. Peterson and did not report his absences each day. He was not discharged at that time because the employer knew the situation and placed him on bereavement leave.

## REASONING AND CONCLUSIONS OF LAW:

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant did not intend to quit his job. The claimant's actions do not constitute a voluntary leaving of employment so this case will be analyzed as a termination of employment.

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

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). 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 testified he told Mr. Peterson he had to go to Florida because his mother-in-law was in a coma. While the employer states Mr. Peterson wrote a statement saying he did not know why the claimant left on June 21, 2019, or why he was gone June 24-June 26, 2019, Mr. Peterson was not available to testify and was not subject to cross-examination. The claimant's first-hand testimony carries more weight than Mr. Peterson's written statement. The claimant was allowed to go to Florida when his father-in-law died and did not understand that the employer viewed that differently because due to the death in his family it placed him on bereavement leave. The claimant was not required to report his absences each day when he was on bereavement leave and did not know he was required to notify the employer of his absences in June 2019 because he did not see the difference between those two situations. Although the claimant should have reported his absences from Florida, this was an isolated incident of misconduct and was not intentional misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

**DECISION:**

The September 8, 2020, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



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Julie Elder  
Administrative Law Judge

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October 30, 2020  
Decision Dated and Mailed

je/sam