

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**IVY J MILLS**

Claimant

**APPEAL NO. 17A-UI-08792-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BAGCRAFTPAPERCON II LLC**

Employer

**OC: 07/30/17**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

BagCraftPaperCon II (employer) appealed a representative's August 15, 2017, decision (reference 01) that concluded Ivy Mills (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 September 13, 2017. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Chuck Griffin, Human Resources Manager. Exhibit D-1 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 June 19, 2017, as a full-time packer. She had previously been assigned to work for the employer through a temporary agency. The claimant signed for receipt of the employer's attendance policy on June 19, 2017. The policy states, "New employees who receive three (3) points within the first 90 days of employment will be terminated."

The claimant properly reported all her absences. She was absent on June 22, 2017, due to incarceration. On July 13, 2017, the claimant left work early due to a probable medical issue. On July 18, 2017, the claimant was absent due to illness. On July 18, 2017, the employer terminated the claimant for three incidents of absenteeism during her first ninety days of employment.

The claimant filed for unemployment insurance benefits with an effective date of July 30, 2017. The employer provided documents in lieu of participation in the fact-finding interview on August 14, 2017.

## 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, 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).

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.

Iowa Admin. Code r. 871-24.32(5) provides:

Discharge for misconduct.

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a properly reported illness which occurred on July 18, 2017. The claimant's absence does not amount to job misconduct because it was properly reported.

The grounds for discharge listed under a contract of hire are irrelevant to determination of eligibility for Job Service benefits in a misconduct situation. *Hurtado v. Iowa Department of Job Service*, 393 N.W.2d 309 (Iowa 1986). The employer terminated the claimant because the claimant did not meet the employer's attendance standards during the trial period. Not meeting the employer's trial period standards are not grounds for termination. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's August 15, 2017, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/scn