IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ASHLEY MENTZER Claimant **ACRO SERVICE CORP.** Employer	**DIA APPEAL NO. 21IWDUI2119** **IWD APPEAL NO. 20A-UI-09139** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 2/7/21** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 22, 2021 (reference 01) unemployment insurance decision that denied benefits based upon claimant's discharge from employment for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on June 18, 2021 before Administrative Law Judge Laura Lockard. The claimant, Ashley Mentzer, participated and was represented by attorney Stuart Higgins. The employer, ACRO Service Corp., did not participate. The administrative law judge took administrative notice of the March 22, 2021 decision and the claimant's appeal. The claimant submitted two letters that were admitted into evidence as Claimant's Exhibits 1 and 2.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant Ashley Mentzer was employed by ACRO Service Corp., a staffing company. Mentzer was assigned by the employer to work at Iowa Workforce Development as a customer service representative. Mentzer began working for the employer on May 11, 2020; she worked full-time, Monday through Friday from 8:00 AM to 4:30 PM.

Mentzer was notified by her supervisor at the IWD jobsite that her contract had been terminated on approximately February 16, 2021. The last day that Mentzer worked at the IWD jobsite was January 22, 2021. On January 25 and January 26, 2021, Mentzer did not work due to a snowstorm; her parking lot had not been plowed and her car was snowed in. Mentzer properly reported these absences before the start of her work shift.

On January 26, 2021, Mentzer's brother notified her that her nephew, who had come to help her over the past weekend and with whom she had interacted in person, tested positive for COVID-19. After learning of her exposure to COVID-19, Mentzer contacted her supervisor at IWD prior to her January 27, 2021 shift to inform him. He advised her that she could not return to work until February 5, 2021. Mentzer subsequently got tested for COVID-19. Her test was negative and she was advised, consistent with the directive from her supervisor, to quarantine due to the exposure.

On February 5, the first day that Mentzer was scheduled to return to work, she could not get her car out of her parking lot due to snow. Mentzer called and reported the absence to her supervisor prior to the start of her work shift. On Sunday, February 7, Mentzer was shoveling and hurt her ankle. Mentzer informed her supervisor that she would not be able to work beginning February 8. Mentzer sought medical attention on February 11; her doctor provided her documentation that she was unable to work from February 8 through February 11.

Mentzer was scheduled to return to work on February 15, a Monday. Mentzer's car would not start on February 15 or February 16. She informed her supervisor both days before the start of her shift that she would be unable to report to work due to lack of transportation. After Mentzer reported to her IWD supervisor that she would return to work on February 17, her supervisor informed her that her contract was being terminated.

Mentzer did not receive any warnings related to her attendance from either IWD or her employer prior to termination. For each of the absences between January 25 and February 16, Mentzer reported the absence to her supervisor before the start of her shift. Mentzer spoke with her IWD supervisor in the fall of 2020 about what to do when the weather got bad in the winter; Mentzer reported she was told it was up to her discretion whether she could make it in during inclement weather.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged from employment for a disqualifying reason. Benefits are allowed.

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) provides, in relevant part:

> 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 bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa App. 1990). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* In contrast, 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. *Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa App.1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa App. 1988).

Iowa Admin. Code r. 871-24.32(7) provides:

> (7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

In order to show misconduct due to absenteeism, the employer must establish the claimant had excessive absences that were unexcused. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even

if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper, supra*; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa App. 2007).

In this case, the employer did not appear at the hearing to participate and present evidence. The credible evidence from claimant, including documentation from medical providers, establishes that the January 27 through February 4 and February 8 through 12 absences were due to properly reported illness or injury. This leaves only the January 25 and 26 and February 5, 15, and 16 absences. Claimant credibly testified that all of these absences were due to her inability to attend work due to weather-related issues, including lack of transportation, and were properly reported. There is no evidence in the record regarding an attendance policy of employer. Employer has not presented evidence indicating the absences were unexcused. Claimant credibly testified she received no warnings from the employer about her absences. Under these circumstances, the employer has not met its burden of proving that Mentzer was discharged for misconduct that would disqualify her from receiving unemployment insurance benefits.

DECISION:

The March 22, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was not discharged from employment for any disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Laura E. Lockard
Administrative Law Judge
Department of Inspections and Appeals
Administrative Hearings Division

6-25-21

Decision Dated and Mailed

CC: Ashley Mentzer, Claimant (first class mail)
Stuart Higgins, Attorney for Claimant (first class mail)
ACRO Service Corp., Employer (first class mail)
Nicole Merrill, IWD (email)
Joni Benson, IWD (email)