

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARA R SANFORD
Claimant

APPEAL NO. 17A-UI-08983-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEDERAL-MOGUL IGNITION COMPANY
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:

Federal-Mogul Ignition Company (employer) appealed a representative's August 21, 2017, decision (reference 03) that concluded Sara Sanford (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 26, 2017. The claimant participated personally. The employer participated by Ron Vorwerk, Human Resources Manager; Becky Mellinger, Human Resources Representative; and Tyson Steele, Operations Supervisor. 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 August 27, 2017, and at the end of her employment she was working as a full-time machine operator in training. The claimant signed for receipt of the employer's handbook on August 27, 2014. The employer has a policy that states, "Any absence or tardy/early-out during a probationary period will result in termination".

The employer issued the claimant Notification of Attendance Disciplines on August 4, November 2, 2015, April 25, May 20, 2016, January 23, and February 20, 2017. These documents told the claimant how many points she had accumulated within a rolling twelve-month period. On May 11, 2017, she was issued a final written warning and ninety calendar day probation. If the claimant had any absences before August 11, 2017, she would be terminated.

Most of the claimant's absences were due to migraines. The claimant decided to see a neurologist about her medical condition. She obtained Family Medical Leave (FMLA) paperwork from the employer's human resources department on June 19, 2017. On July 7, 2017, her doctor told her that the employer had been sent the papers. The claimant was given

a copy of the completed documents. The claimant did not know the employer did not receive the FMLA papers. On July 21, 2017, the claimant called in absent because she had a migraine. The employer terminated her on August 1, 2017.

The claimant filed for unemployment insurance benefits with an effective date of August 21, 2017. The employer participated personally at the fact finding interview on August 17, 2017, by Ron Vorwerk.

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.

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 21, 2017. The claimant's absence does not amount to job misconduct because it was properly reported. 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 21, 2017, decision (reference 03) 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/rvs