

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**ALYSSIA M NOLAN**  
Claimant

**APPEAL NO: 18A-UI-10902-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 09/30/18**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 25, 2018, 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 November 20, 2018. The claimant participated in the hearing. Jana Cates, Administrator; Amanda Rivera, Unemployment Insurance Consultant; and Lindsay Gilbert, Employer Representative, participated in the hearing on behalf of the employer. Department's Exhibit D-1 and Employer's Exhibits One and Two were admitted into evidence.

**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 CNA/CMA for Care Initiatives from September 30, 2015 to March 26, 2018. She was discharged because the employer considered her a no-call/no-show March 26, 2018.

The claimant was going through a divorce and custody case. At the conclusion of a court hearing February 26, 2018, the final hearing in the proceedings was scheduled for March 26, 2018. The claimant immediately notified the employer of her need to be off March 26, 2018, and although the employer had already completed the schedule for March 2018, Administrator Jana Cates said the employer would do its best to get the claimant the day off and mentioned a former employee was coming back and she would see if that person could cover the claimant's shift but assured the claimant they would work something out. As the claimant's court date grew closer she asked DON Tonya Larsen and Ms. Cates about whether she would be granted the day off and was then told she would have to find her own replacement. The claimant stated she could not find a replacement. On March 23 or March 24, 2018, Ms. Larson told the claimant her employment would be terminated if she did not report for work or secure a replacement. When the claimant could not find a replacement and could not go to work because of her court

hearing, she assumed her employment was terminated following Ms. Larson's comments and she did not return to work March 27, 2018.

The claimant previously received a verbal warning for attendance September 5, 2017; a written warning for attendance October 31, 2017; and a final written warning for attendance December 26, 2017, at which time she was told if she had any further absences in the next 12 months, her employment would be terminated.

## **REASONING AND CONCLUSIONS OF LAW:**

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).

It is unreasonable to expect an employee to choose between her divorce/child custody hearing and losing her job, regardless of whether she has a replacement worker. The claimant gave the employer one month's notice of her need to be off work March 26, 2018, and while it is understandable that the employer wanted her to find a replacement worker per policy, arrangements should have been made to allow the claimant to attend her court hearing and keep her job when she was unable to secure a replacement.

Under these circumstances, the administrative law judge finds the employer has not met its burden of proving intentional job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The October 25, 2018, 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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Decision Dated and Mailed

je/scn