

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**NATASHA L POOLE**  
Claimant

**APPEAL NO. 19A-UI-02188-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNIVERSAL ADCOM LLC**  
Employer

**OC: 02/10/19**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Natasha Poole (claimant) appealed a representative's March 4, 2019, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Universal Adcom (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 28, 2019. The claimant was represented by John Graupmann, Para Legal, and participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibit A 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 July 9, 2018, as a full-time manager/closer. She signed for receipt of the employer's handbook on July 9, 2018. The employer has a policy that allows employees to bring their children to work when they do not have a babysitter.

The claimant had a house fire and could not work for three days during the week of the fire. Her supervisor threatened she could lose her job due to absenteeism. The vice president of the company was willing to work with her and her absences. The claimant was absent most of the week following the fire when the house was uninhabitable and she was living with her mother forty-five minutes away. The claimant moved back into the house the next week when restoration began. She was absent partial days to let workers into her home. These were the claimant's only absences and they were properly reported. In November 2018, the employer issued her a written warning for those absences. The employer notified the claimant that further infractions could result in a final written warning.

Right before Christmas 2018, the employer started a new policy that said the claimant's prepay percentage had to be thirty-percent of her deals sold over four weeks. In February 2019, the

employer issued her a written warning because her prepay percentage was at approximately twenty-six-percent. The employer notified the claimant that further infractions could result in a final written warning.

On February 13, 2019, the claimant's four-year-old twin daughter's arrived at her workplace at about 2:30 p.m. There were three other children at work approximately aged nine, six, and one. The one-year-old sat on the grandmother's lap. All the other children sat quietly at empty desks. The claimant took her break with her children in her car from 3:00 to 3:20 p.m. The supervisor told the group it was low on deals. The claimant was mentoring subordinates, on the telephone, making deals, and sales. Her children were quietly watching a video and eating a snack.

At one point, her supervisor asked to speak with her but she motioned that she was on the telephone. Later, he told her to clock out. She asked if she could discuss the matter in his office. He told her she was distracted by her children and she should clock out. She said she had been working. The claimant went back to her desk to gather her items in preparation for leaving. She was then called back into his office and terminated for insubordination. The claimant questioned what the insubordination meant. He said, "This". The claimant did not understand what he meant. She collected her items and left.

#### **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(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's March 4, 2019, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs