

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHIBORAH PATTERSON
Claimant

VAR MILL INC
Employer

APPEAL 21A-UI-17579-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: Appellant (2R)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 29, 2021, (reference 06) unemployment insurance decision that denied benefits based upon her voluntary resignation. The parties were properly notified about the hearing. A telephone hearing was held on October 5, 2021. The claimant participated and testified. The hearing was held jointly with appeal 21A-UI-17580-SN-T, 21A-UI-17581-SN-T, and 21A-UI-17582-SN-T. Employer participated through Business Manager Stan Hemesath and Supervisor Joyce Erdman.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

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

The claimant was employed as a crew member / QA inspector from November 26, 2018, until she was separated from employment on July 31, 2020, when she was terminated. The claimant was hired on to work a full-time schedule of 35 hours per week.

In October 2019, the claimant requested to be scheduled only 27 hours per week because she had to take her daughter to medical appointments.

On October 15, 2019, the claimant requested and was granted a leave of absence to tend to these medical concerns with her daughter.

On January 22, 2020, the claimant returned to work. She continued working at an average of 14.5 hours per week until February 7, 2020. On February 7, 2020, the claimant left again due to tending to her daughter's medical appointments.

On July 6, 2020, the claimant returned to work an average of 14.5 hours per week.

On July 31, 2020, Ms. Erdman told the claimant that her position would be terminated because they needed someone more reliable in the position. The claimant had only received verbal warnings regarding being tardy in the past.

The administrative record DBIN indicate the claimant only worked six weeks from May 16, 2020 to May 22, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code section 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)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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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

Ct. App. 1984). Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

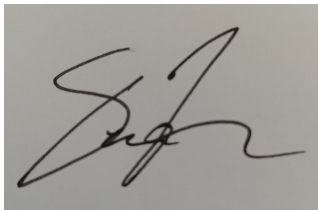
In this case, the claimant was discharged for not being able to work her full schedule due to tending to her daughter’s medical issues. While the administrative law judge is sympathetic to the burden on the employer’s operations, this is not work-related misconduct and cannot be disqualifying. Benefits are granted, provided she is otherwise eligible.

DECISION:

The July 29, 2021, (reference 06) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

REMAND:

The administrative law judge is remanding the issue of whether the claimant was able and available to the Benefits Bureau for an initial determination. He is also remanding to the Benefits Bureau the issue of whether the claimant’s earnings as reported on DBIN are accurate.



Sean M. Nelson
Administrative Law Judge
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October 14, 2021
Decision Dated and Mailed

smn/kmj