

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAELYN B HARRINGTON
Claimant

APPEAL NO. 15A-UI-05817-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 04/26/15
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated May 8, 2015, reference 01, which denied unemployment insurance benefits finding that the claimant voluntarily quit work on March 21, 2015 by failing to report for work for three days in a row and not notifying the employer of the reason. After due notice was provided, a telephone hearing was held on June 29, 2015. Claimant participated. The employer participated by Ms. Kristi Fox, Human Resource Clerk. Claimant's Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Raelyn Harrington was employed by Tyson Fresh Meats, Inc. from September 24, 2012 until March 21, 2015 when the employer concluded the claimant had voluntarily quit her employment by failing to report for scheduled work for three or more consecutive work days without properly notifying the employer of the reason. Ms. Harrington was employed as a full-time production worker and was paid by the hour.

Ms. Harrington was scheduled to work Monday, March 16 through Friday, March 20, 2015 but did not report for work. Company policy requires employees who are going to be absent from work to notify the employer of their impending absence and the reason at least one-half hour before the beginning of their work shift each day. Ms. Harrington was aware of the company rule. Employees are to call a telephone number specified on their employee identification card. Designated employees of Tyson Fresh Meats, Inc. review all messages left before the beginning of each work shift and are required to document whether an employee has called in and left a message or spoken directly to a company representative about their impending absence each work day. When Ms. Harrington had not reported for scheduled work on Monday, March 16, 2015 through Friday, March 20, 2015 and there was no record of the claimant either leaving a message or speaking with a representative about her impending

absences each day, the employer concluded the claimant had left her employment by job abandonment. When Ms. Harrington attempted to report for work on Saturday, March 21, 2015, she was not allowed to enter the facility because the employer removed her from access to the work site.

It is the claimant's position that she had called in each day, March 16, 2015 through March 20, 2015 calling at least one-half hour before the beginning of her work shift stating that she was "sick."

During the period of Monday, March 16, through Friday, March 20, 2015, the claimant had not reported for scheduled work because of the death of a family member. Ms. Harrington reported that she was "sick" although she was not because she believed that stating that she was sick would cause her absences to be excused by the company.

At the time of the claimant's discharge the claimant was under investigation by the company for what the employer believed to be falsification of medical documents that had previously been submitted by the claimant. It is the employer's belief that if the claimant called in, she did so in a manner that would create the appearance of calling in on telephone records without leaving a message or actually speaking to a company representative, as no messages from Ms. Harrington could be found and no employees reported speaking with the claimant on the days in question.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does.

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)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(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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

No aspect of the contract for employment is more basic than the right of the employer to expect employees will appear for work on the day and hour agreed upon, or in the alternative, that the employee will provide timely and accurate notice to the employer of the reason for their absence from work.

Failure to report to work without proper notification to the employer is generally considered as an unexcused absence. One unexcused absence without a demonstrable history of other unexcused absences is not disqualifying. An employee's failure to report for work for three or more consecutive work days without providing proper notification to the employer, in violation of the employer's rules leads to a presumption that the claimant has abandoned his or her job.

In the case at hand, the evidence in the record (See Claimant's Exhibit One) establishes that Ms. Harrington did call the employer each day from Monday, March 16, 2015 through Friday, March 20, 2015. The evidence also establishes, however, that the claimant did not provide an accurate explanation for her absence from work during that period. Ms. Harrington was not ill as she testified she had reported to her employer. The evidence in the record establishes that Ms. Harrington was attending a funeral of a friend or family member. Because the employer did not receive the messages and the messages did not state the true reason for the claimant's absences, the employer was unable to make staffing adjustments or to make a determination as to whether the claimant was authorized for bereavement time which is in most cases based upon the closeness of the blood relationship to the family member who has passed away. Because the claimant did not correctly report the reason for her consecutive days of absence from work and the employer received neither a voice message or direct communication from the claimant, her absences of March 16, 2015 through March 20, 2015 were unexcused and excessive and constituted misconduct in connection with her employment. Accordingly, the claimant is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated May 8, 2015, reference 01, is affirmed as modified. The portion of the determination disqualifying the claimant from receiving benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount is affirmed. The portion of the determination finding the claimant voluntarily quit work is modified to find the claimant was discharged for misconduct in connection with her work.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs