IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

ASIA J BAKER
Claimant

CHATHAM OAKS INC
Employer

APPEAL NO. 19A-UI-00159-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/09/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Chatham Oaks (employer) appealed a representative's December 31, 2018, decision (reference 01) that concluded Asia Baker (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 January 23, 2019. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Aaron Pauls, Administrator; Lena Krause, Dietary Supervisor; Michele Wray, Vice President of Human Resources. Exhibit D-1 was received into evidence. The employer offered and Exhibit 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 November 20, 2017, and at the end of her employment she was working as a full-time cook. She signed for receipt of the Chatham Oakes Personnel Policies and Practices and the Abbe Corporation's Company Personnel Policies and Practices/Work Rules on November 20, 2017. The two policies are similar.

On September 19, 2018, the employer issued the claimant a verbal warning for attendance. The claimant properly reported her absences on May 18, 19, 20, 21, June 21, 30, July 2, 12, 24, 27, August 4, 13, 14, and 20, 2018. The absences were due to the claimant's medical issues or the claimant's newborn son's medical issues. The employer notified the claimant that further infractions could result in termination from employment.

The claimant properly reported her absence on September 20, 2018, because her newborn had a medical emergency. She also properly reported her absence on September 21, 2018, as he was in the hospital. On September 25, October 1, and 4, 2018, she properly reported her absence due to medical issues with the same son.

On October 15, 2018, she properly reported that she would be absent because she had influenza. On October 18, 2018, her five or six year old son was injured at school and was called away from work one hour before the end of her shift. She properly reported that absence. On October 29, 2018, the claimant properly reported her absence because her newborn was having seizures and she took him to the hospital.

The claimant did not have childcare for November 21, 23, and 24, 2018. She requested the time off through the time clock request on the computer and arranged with other staff members to work for her. The dietary supervisor saw it but she could not approve it because the request was for unpaid time off. On an unknown date she forwarded the request to the administrator and his supervisor, the vice president for residential treatment services. The employer did not know what happened to the request, what day a determination was made, or who made the determination. The claimant looked on the computer and saw that her time was approved.

On November 20, 2018, the administrator called the claimant and discussed her work schedule on November 21, 23, and 24, 2018. The claimant told the administrator that her request had been approved and others agreed to work for her. The administrator told the claimant there was no way that her request would have been approved. No other staff were on the schedule to work for her. He told her that she was scheduled and he needed her there. She said the employer granted her request for leave. He did not accept her notification of absence and felt she should appear. The administrator did not investigate the claimant's assertions or call her back.

The claimant arrived for work on November 25, 2018, before the start of her shift and worked for 6.5 hours. After that, the employer terminated the claimant for failure to properly report her absence on November 21, 23, and 24, 2018.

The claimant filed for unemployment insurance benefits with an effective date of December 9, 2018. The employer provided the name and number of Michele Wray and Aaron Pauls as the people who would participate in the fact-finding interview on December 27, 2018. The fact finder called them but they were not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided some documents for the fact finding interview. The employer did not submit the specific rule or policy that the claimant violated which caused the separation.

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.
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> 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.

In this case, the employer did not terminate the claimant for absenteeism. It terminated the claimant for failure to properly report her absences on November 21, 23, and 24, 2018. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant properly requested time off through the employer computer system. After the request, the employer had no information or evidence about what happened to the claimant's request. With no information or evidence, they determined the request was not approved.

On November 20, 2018, the claimant again notified the administrator she was not appearing for work on November 21, 23, and 24, 2018. This was based on her computer request and subsequent approval. The administrator chose not to accept her notice. Later, he determined that the absences were without notice and terminated her for that lack of notice. The administrator chose to believe the absences were unreported because he did not approve of the reason for the absences. He did not investigate the claimant's allegations about whether the computer showed the absence approved, by whom, dates the claimant's requests were made, or any other information. The employer did not provide sufficient 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 December 31, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs