

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER M BEIER
Claimant

APPEAL NO. 14A-UI-03668-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF HUMAN SVCS/GLENWOOD
Employer

OC: 03/09/14
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 March 27, 2014 (reference 01) which denied unemployment insurance benefits. After due notice was provided, a hearing was held in Council Bluffs, Iowa on July 28, 2014. The claimant participated. Participating on behalf of the claimant was Mr. Michael J. Tulis, Attorney with Iowa Legal Aid. Participating on behalf of the employer was Ms. Sandy Linsin, Hearing Representative from Employers Edge LLC. Hearing witnesses for the employer were Ms. Patricia Austin, Director Food/Nutrition Services, and Mr. James Thompson, Interviewer. Employer's Exhibits One through Twelve were received into evidence. Claimant's Exhibits A through E were received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Jennifer Beier began employment with the Iowa Department of Human Services/Glenwood on May 5, 2009 and was employed as a full-time food service worker. Ms. Beier was paid by the hour, her immediate supervisor was Mr. Ronnie Martin. The claimant was discharged from her employment with the Iowa Department of Human Services on March 7, 2014. Subsequently, on June 26, 2014 a settlement was reached and the claimant's separation from employment was categorized as a "quit" to protect the claimant's employment history.

Ms. Beier was discharged based upon the employer's belief that the claimant had fraudulently used sick time and had been untruthful during the investigation. On both February 27 and 28, 2014 Ms. Beier called in sick, citing Family Medical Leave Act time. The claimant had previously been approved for intermittent Family Medical Leave by her physician. The claimant had Family Leave time available to her and a one-year time limit on the use of the intermittent Family Leave had not expired.

The employer suspected that Ms. Beier might call in sick on Friday, February 28, 2014, because her request to use vacation time for that day had been denied. The employer sent two employees to the airport that morning. The witnesses observed the claimant and her fiancé departing from the Omaha, Nebraska airport at approximately 5:51 a.m. on February 28, 2014. Ms. Beier called later on the morning of February 28, 2014 to report that she would be absent, stating Family Medical Leave as the reason.

The claimant returned to work on Monday, March 3, 2014 and the employer began an inquiry about the claimant's absence and the reasons for it. The claimant was questioned and stated that she had cancelled her airline trip to Chicago and stayed home from work due to work stress covered under the FMLA authorization by her physician. Subsequently, when re-questioned on March 6, 2014 Ms. Beier admitted that she had travelled to Chicago with her fiancé by airplane on February 28, 2014.

On January 22, 2014 Ms. Beier had submitted a request to her employer to take vacation time on February 28, 2014 for an out-of-town trip. The claimant's fiancé, who was also employed by the Department of Human Services, had also requested vacation time for the same date to travel to Chicago, on an airline trip given to the couple as a wedding gift by a member of their wedding party. Ms. Beier's request to take vacation time for February 28, 2014 had been denied by the employer because of staffing reasons. However, her fiancé's request to take vacation time for that day had been approved. Ms. Beier had attempted to trade shifts with other employees for the February 28 date but had been unsuccessful. When the claimant's fiancé was questioned about whether Ms. Beier had travelled with him on the out-of-town trip on February 28, 2014, he initially stated that Ms. Beier had not gone on the trip but later admitted that she had.

The decision made to terminate Ms. Beier was made in part because the claimant had previously been warned for an unauthorized absence from her work area and had been warned then for giving inaccurate information when questioned. A decision was made not to discharge the claimant's fiancé because he had authorization to be absent on the day in question and had not previously been warned about providing inaccurate information to the employer.

It is Ms. Beier's position that she had made a request to leave work early on Wednesday, February 26, 2014 but the employer had delayed in responding to her request and that the stress caused by the employer by denying her request for vacation time for February 28, and the stress associated with the delay in responding to her request to leave early, caused anxiety. This resulted in the claimant calling off work on February 27 and again on February 28, 2014. It is the claimant's further position that she had been authorized for intermittent absence due to stress under provisions of the Family Medical Leave Act and her absence on February 28, 2014 was for a reason that had previously been verified by her doctor. The claimant further asserts that the Family Medical Leave Act does not prohibit travel. Ms. Beier contends that when interviewed about the reasons for her absence, she was taken by surprise, nervous and therefore was not candid in her initial responses.

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 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).

The employer bears the burden of proof in establishing qualifying misconduct on the part of the claimant. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a 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).

In this matter, the evidence in the record establishes that both Ms. Beier and her fiancé, who was also employed by the Iowa Department of Human Services, made application on January 22, 2014 to be approved for vacation leave on Friday, February 28, 2014. Ms. Beier was not immediately notified that her application for vacation leave had been denied, however Ms. Beier was aware that her application for leave had been denied through information provided by her fiancé. The claimant's fiancé had been approved and was informed that the claimant had not been approved to take annual leave on the specified date. The reason for the employer denying the claimant's request was that another staff member had previously requested to be absent that day and had been approved by the employer. The employer generally allows only one employee to be off work in that department at the same time.

The evidence is uncontroverted that Ms. Beier and her fiancé had made it be known that they had been given gift tickets to fly to Chicago, Illinois and attend a sporting function, and that Ms. Beier and her fiancé planned to travel to Chicago together on February 28, 2014 for the event.

After becoming aware that her request for leave had been denied, Ms. Beier attempted to trade shifts with one or more other employees, so that she could miss work on Friday, February 28, 2014, and the claimant was unsuccessful in finding a replacement. The employer was aware that Mr. Curtis, the claimant's fiancé, planned on going on the flight and attending the event that had been given to the couple as a wedding present and was aware that Ms. Beier had attempted to secure replacement for that day. The employer anticipated that the claimant might go on the pre-planned trip although she had not received permission to be off work that day from her employer. The employer sent two witnesses to the Omaha, Nebraska airport on February 28, 2014 and the claimant was observed flight boarding that morning with her fiancé. The claimant subsequently called in shortly before the beginning of her work shift, indicating that she intended to use FMLA time without providing any other information about the reason for her absence. When she was questioned the following Monday, the claimant was untruthful about whether she had gone to Chicago with her fiancé. The claimant had previously been warned for providing inaccurate statements during an investigation and a decision was made to terminate Ms. Beier from her employment. Her fiancé, who also initially denied that Ms. Beier had gone on the trip, was not discharged based upon his initial false statement because he had not previously been warned for similar conduct.

Although the administrative law judge is sympathetic to the claimant's situation, the administrative law judge concludes that the employer has sustained by a preponderance of evidence that the claimant's discharge took place under disqualifying conditions.

The claimant chose to attend a pre-planned airline trip on February 28, 2014 although she was aware that her request to use vacation time for the day had not been approved. The claimant invoked intermittent Family Medical Leave as the reason for being absent when she called in on February 28, 2014 and provided no information so the employer could determine if her absence that day qualified under the intermittent Family Medical Leave that she had been previously approved for. The claimant also made untruthful statements to the employer when the matter was being investigated. The claimant's conduct was in disregard of the employer's interest and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law.

The claimant was separated from her employment by the Iowa Department of Human Services on March 7, 2014 when she was discharged from employment. Subsequently, the claimant filed a grievance about her discharge and as part of the grievance resolution improvement process, a settlement was reached on June 26, 2014 that retroactively categorized the claimant's termination to be categorized as a resignation for the purposes of future references (Claimant's Exhibit A). The determination of how a job separation took place and categorization of whether the separation is disqualifying, is not left to the later discretion of the parties. The determination of these factors are by law the responsibility of Iowa Workforce Development.

DECISION:

The representative's decision dated March 27, 2014 (reference 01) is affirmed. The claimant is disqualified until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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