

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRITA L WOOLUMS
Claimant

APPEAL 15A-UI-09789-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GOODWILL INDUSTRIES OF THE
HEARTLAND**
Employer

**OC: 08/02/15
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 27, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on September 15, 2015. The claimant participated personally. The employer participated through Mary Kating, a hearing representative with the Sedwick Unemployment company. Employer witnesses were Wendy Bucklin, the human resources director, and MaryBeth Valencia, a supervisor. Carmen Heck, the program director, was an observer. No documents were offered or admitted into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a job trainer and was separated from employment on August 17, 2015, when she was discharged for falsification of her timecard and misrepresentation of facts.

The employer provides services for individuals facing barriers and disabilities. As part of the claimant's job duties, she was to teach and model positive behaviors for the individuals served, including being honest. The employer's handbook provides that falsification of documentation can result in immediate discharge. The employer's policies also include two days of paid bereavement leave for the death of a grandparent. The bereavement can be used for a funeral, memorial, or even travel associated with the death. The claimant was made aware of the employer's policies at the time of hire and had access on the employer's website.

On July 16, 2015, the claimant requested July 17 and 20 off for bereavement purposes and communicated with her employer she was leaving the next day to Oregon for her grandfather's memorial. The claimant did not leave July 17 after all, but spent the day "preparing her mother"

to face her siblings the following day. The claimant did not come into work on July 17, when they did not leave, because she felt entitled to grieve as she saw fit, which including being able to prepare her mentally fragile mother for her trip.

The employer had not requested any documentation up front from the claimant, and was of the impression her grandfather's passing was recent. The employer asked the claimant if she wanted him to be acknowledged in their monthly newsletter, and she said yes, and provided the employer with his name, age, and the fact he was living in Oregon. The employer used the information with the intent to also retrieve an obituary which would establish the claimant's relationship with him, and cover the absence as bereavement. Instead, the employer learned the claimant's grandfather had passed away on May 24, 2015, and funeral services were held on June 20, 2015. The employer did not immediately confront the claimant but gave her an opportunity to explain the absence.

On July 31, 2015, the claimant completed her timecard for the pay period including the time requested off for bereavement. The claimant requested bereavement leave for July 17 and 20 on her timecard and did not amend it reflect she was not in fact on bereavement on July 17 or to explain why she was wishing to take the bereavement two months after death. The employer confronted the claimant about its finding, and received new and conflicting information from the claimant. The employer suspended the claimant and gave her until August 17, 2015 to provide supporting documentation for her absence. The employer stated it would allow a plane ticket, a program, or any other proof of how the claimant spent the time off.

The claimant testified when she was fifteen, her grandfather sent her a \$100,000 check, and her parents burned the check in front of her. Before they burned it, she was able to get his phone number, and they remained in touch until April 2015. The claimant was unaware he had died and her mother was estranged from her siblings. Even though the grandfather had passed away two months earlier, it was the claimant's initial testimony that they were going to Oregon to spread his ashes. She later learned it was not the ashes of his personal being, but rather that her mother's siblings had burned some of his belongings, and they (the claimant and her mother) would go scatter the ashes of his belongings as part of the time off for bereavement.

The claimant was unable to produce a plane ticket, because she flew on a private plane on July 18, 2015, which was chartered from Iowa City to Portland, Oregon and back. The pilot did not work for a charter company, but independently, and the claimant would not reveal the pilot's name beyond "Wallace" stating her family wanted to keep it private, and her uncle had coordinated the flights. When questioned at the hearing about what happened upon arrival, the claimant said they rented a car and went to an address provided, where the ashes of her grandfather's belongings were given to her and her mother, in a canister. They returned to the plane and then flew over near the grandfather's home, where the plane door/window was opened and the ashes were scattered before returning home. The claimant is an experienced skydiver and testified the pilot granted permission for the door to be opened and the cabin did not lose air pressurization, as one might expect.

The claimant could not produce a car rental receipt because the car was rented by her uncle, and her mother would not give her uncle's phone number. The claimant was aware her job was in jeopardy but maintained her family would not release information based on the pending distribution of the estate and it being a private, family matter. The claimant did produce a "tail" number of the plane for the employer, but the employer's investigation could not tie it to a flight that left Iowa City during the period the claimant was on bereavement. She was subsequently discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was not honest, and misrepresented facts surrounding her grandfather's passing when requesting bereavement time off and compensation for July 17 and 20, 2015.

Cognizant that bereavement and grief can extend beyond a formal funeral or memorial services, the claimant did not go to Oregon on July 17, 2015 for her grandfather's memorial as she represented to her employer. Rather, her grandfather passed away May 24, 2015, and services were held on June 20, 2015. At the time of her employment, nor at the time of the hearing, did the claimant produce a valid plane ticket, receipt or connection to correspond that her time off listed as "bereavement" for her timecard was truly related to her grandfather's passing. The

Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

Regardless if the claimant's explanation was extraordinary to obtain two days' bereavement for the loss of her grandfather, it still does not relieve the claimant of the responsibility to provide documentation to support her absences, or her duty to be honest to her employer. The claimant admittedly did not fly to Oregon on July 17, 2015 as she told her employer she was doing, and never told the employer her plans had changed until after she submitted her timecard and was confronted. The claimant never produced any valid documentation that she was absent for work in connection to her grandfather's passing. It cannot be ignored that the nature of the claimant's job was to be a job trainer, displaying and modeling positive behaviors in the workplace. The employer has a right to expect honesty and integrity from its employee's not false, misleading statements. This is a violation of the duties and responsibilities the employer has the right to expect of an employee. The claimant knew or should have known her conduct was in disregard of the employer's interests and reasonable standards of behavior that the employer has a right to expect of its employees. Benefits are withheld.

DECISION:

The August 27, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css