

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LYNETTE K STOWE**  
Claimant

**IMMANUEL**  
Employer

**APPEAL 19A-UI-06037-S1-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/07/19**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Immanuel (employer) appealed a representative's July 26, 2019, decision (reference 01) that concluded Lynette Stowe (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 held on August 22, 2019. The claimant participated personally. The employer was represented by Thomas Kuiper, Hearings Representative, and participated by Danielle Richardson, Human Resources Business Partner. The administrative law judge took official notice of the administrative record. 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 October 1, 2018, as a full-time assisted living manager/registered nurse. She signed for receipt of the employer's handbook on January 27, 2019. The employer has a policy that states an employee who leaves a resident without care will be terminated. The employer issued the claimant a final written warning on June 14, 2019, for unprofessionalism. The warning indicated that further infractions could result in the claimant's termination from employment.

On June 25, 2019, the claimant received a call from her daughter in Colorado. The daughter was having medical issues, could not walk, and was going to urgent care. The claimant told her executive director on June 25, 2019, about the situation. She said she might have to leave work to be with her daughter, depending on the decision of the health care professionals in Colorado. The employer was formulating a plan for medical coverage of the residents.

On June 26, 2019, the claimant's daughter called the claimant and said they were taking her into emergency surgery. On June 26, 2019, the claimant told her executive director and his

secretary that she was leaving that day. She notified the Human Resources Business Partner and was informed she would receive Family Medical Leave (FMLA) paperwork to complete. The claimant also notified the on-site registered nurse and licensed practical nurse. Both nurses said they would take care of the residents. The claimant knew there was also a corporate nurse available to care for residents.

While the claimant was driving to Colorado, the claimant and the Human Resources Business Partner talked on the telephone. No one from the employer's office told the claimant she could be terminated for leaving work. The claimant's FMLA was approved from June 26 to July 3, 2019.

On June 28, 2019, the claimant called the employer. The Human Resources Business Partner talked to the claimant about her return date which was anticipated to be July 1, 2019. There was no reprimand or talk of termination. On July 2, 2019, the employer called the claimant and terminated her for leaving work with having a care plan in place for the following week.

The claimant filed for unemployment insurance benefits with an effective date of July 7, 2019. The employer participated personally at the fact finding interview on July 24, 2019, by Danielle Richardson.

#### **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.

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 has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. It terminated the claimant for leaving work without approval while she was on approved FMLA. The employer also terminated the claimant for failure to provide nursing coverage for her shift on June 26, 2019, when the claimant provided three nurses. Leaving work in an emergency situation to be with a daughter who is going into emergency surgery after approximately twenty-four hours' notice is not misconduct. The employer did not provide evidence of misconduct at the hearing. Consequently 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 July 26, 2019, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs