

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN M HARRIS
Claimant

APPEAL NO. 11A-UI-08132-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

PANAMA TRANSFER INC
Employer

**OC: 05/15/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Panama Transfer, Inc. filed a timely appeal from a representative's decision dated June 7, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a hearing was held in Council Bluffs, Iowa on July 21, 2011. Claimant appeared personally and testified on her own behalf. Employer appeared by Ms. Colleen Kloewer, Office Manager, and Mr. Dean Kloewer, Company President. Employer's Exhibits One, Two and Three and Claimant's Exhibit A were received into evidence.

ISSUE:

The issue is whether the evidence in the record establishes 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: Dawn Harris was employed by Panama Transfer, Inc. from October 20, 2008 until May 13, 2011 when she was discharged from employment. Ms. Harris held the position of evening office billing clerk and was paid by the hour. Her immediate supervisor was Colleen Kloewer.

Ms. Harris was discharged when she failed to report for scheduled work on the evening of May 15, 2011. Ms. Harris had previously requested that evening off work to prepare to accompany her child on a school field trip the next day. The employer denied the claimant's request because of staffing considerations. Ms. Harris then requested May 12, 2011 off as an alternative and that evening off work was granted to the claimant.

On May 13, 2011, Ms. Harris accompanied one of her children on the school field trip and upon her return that afternoon was informed that another one of her children had become ill at preschool. Because the child was ill and the claimant had no other child care arrangements made for that evening, the claimant called her employer and requested a "personal day" off work that evening. The claimant was informed that if she did not report she would receive a three-day suspension. The claimant accepted the employer's decision choosing to accept the

three-day suspension as she believed that she could not report to work due to the illness of her child.

Subsequently, the claimant took her child to a doctor's office at the first opportunity the following Monday and at that time the doctor verified the claimant's need to be absent on May 13, 2011 due to the illness of her child.

The employer believing that Ms. Harris had chosen not to report for work on the evening of May 13 for personal reasons elected to discharge the claimant from employment. The employer had made special accommodations for Ms. Harris in the past and considered a number of absences that she had had from work to be excessive. A management decision was, therefore, made to terminate the claimant from her employment with the company.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

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.

871 IAC 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.

The employer has the burden of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily 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).

The Supreme Court of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct. The Court held that the absences must both be excessive and unexcused and that the concept included tardiness, leaving early, etc. The Court further held in the Higgins case, however, that absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer.

In this matter Ms. Harris properly notified her employer that she would not be reporting to work on the evening of May 13, 2011 requesting "personal time off." The claimant did not explain the reason for her absence further as the company office manager stated that if the claimant did not report she would be suspended from work for three days. Ms. Harris accepted the suspension as she believed that she had no reasonable alternative and needed to provide care to her child who was ill. Subsequently, the claimant obtained medical documentation verifying the claimant's need to be absent because of the medical needs of her child. The claimant was not allowed to return to work or undergo a three-day suspension as the employer made a management decision to discharge the claimant from employment believing the claimant had become generally unreliable in her attendance at work.

The question before the administrative law judge in this case is not whether Panama Transfer, Inc. has a right to discharge Ms. Harris for these reasons but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Ms. Harris may have been a sound decision from a management viewpoint, the administrative law judge must conclude based upon the application of the facts of the law that the claimant's discharge took place for no disqualifying reason. The claimant's absence was for an excusable reason and the claimant had properly notified the employer. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated June 7, 2011, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs