

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TASHA C EDWARDS
Claimant

APPEAL NO. 18A-UI-06621-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HILTON DOMESTIC OPERATING
COMPANY**
Employer

OC: 09/03/17
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Hilton Domestic Operating (employer) appealed a representative's June 18, 2018, decision (reference 06) that concluded Tasha Edwards (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 July 3, 2018. The claimant participated personally. The employer participated by Jennifer Travis, New Hire Experience Program Coordinator. 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 January 30, 2018, as a part-time reservation sales specialist. She received the employer's handbook. The employer did not issue the claimant any warnings during her employment.

The claimant completed ninety-four percent of her on-line training classes. On May 1, 2018, the claimant was scheduled to take the first of the last set of three classes. There were storms in her area and she was unable to access the class that night. The employer rescheduled her to take the classes on May 4, 7 and 8, 2018. The classes had to be taken in order. On May 4, 2018, the claimant was in the emergency room with her thirteen-year-old daughter and missed the class. She reported to her supervisor that her daughter was critically ill with heart disease.

On May 17, 2018, the employer terminated the claimant because she did not complete her training and the employer would not be offering any other classes. The claimant's daughter passed away on May 24, 2018.

The claimant filed for unemployment insurance benefits with an effective date of September 3, 2017. The fact finder called the employer for an interview on June 15, 2018, but it was 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.

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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 must establish not

only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on May 4, 2018. The claimant was not discharged until May 17, 2018. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's June 18, 2018, decision (reference 06) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs