

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LETICIA D DOWNING
Claimant

APPEAL NO: 19A-UI-00229-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHICAGO RIVET & MACHINE CO
Employer

OC: 12/02/18
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Chicago Rivet & Machine Company, the employer filed a timely appeal from a representative's unemployment insurance decision dated December 31, 2018, (reference 02) which held Leticia Downing eligible to receive unemployment insurance benefits, finding that the claimant was dismissed from work on December 5, 2018, due to excessive absences but finding that the absences were due to illness and were properly reported. After due notice was provided, a telephone hearing was held on January 25, 2019. Claimant late called and participated. Employer participated by Mr. David Kraber, Plant Manager.

ISSUE:

The issue is whether the claimant was discharged for intentional work-connected 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: Leticia Downing was employed by Chicago Rivet & Machine Company from May 22, 2017 until December 5, 2018 when she was discharged. Ms. Downing worked as a full-time quality control inspector and was paid by the hour. Her immediate supervisors were David Coop and David Kraber.

Ms. Downing was discharged by telephone on the afternoon of December 5, 2018 after she had been absent from work that day. On the evening of December 4, 2018, Ms. Downing was involved in an automobile accident and hospitalized. Ms. Downing telephoned the plant manager, Mr. Kraber from the hospital on the evening of December 4, 2018 to inform him of the accident, her hospitalization, and to tell him that she would not be able to report to work the next day, December 5, 2018. After being examined at the hospital, Ms. Downing was released on December 4, 2018 at approximately 1:30 a.m. from the hospital and then incarcerated until the following morning. When she was released from incarceration, Ms. Downing attempted to call the employer, but was unable to make direct contact with Mr. Kraber. A voice message was left. When the plant manager called the claimant back on December 5, 2018, Ms. Downing

inquired as to whether she still had a job and was told by Mr. Kraber her employment had ended.

It was Mr. Kraber's belief that Ms. Downing had been excessively absent while employed by the company. Mr. Kraber spoke to Ms. Downing on an informal basis about her poor attendance on a number of occasions. Ms. Downing was suspended for one day in April 2018 for failing to provide the employer a reason for her absence.

The employer asserts that Ms. Downing had been absent, tardy, or left work early during most weeks that she had been employed by the company. The employer cited approximately four instances of unsatisfactory attendance by Ms. Downing at the time of hearing.

After Ms. Downing had called her employer on the evening of December 4, 2018 to report that she was in the hospital and would not be reporting for work the next day, the employer learned through rumor that Ms. Downing had later been incarcerated on the night of December 4, into the early morning hours of December 5, 2018. It appears that the employer does not consider incarceration as good cause reason for being absent. Mr. Kraber discharged Ms. Downing by telephone because she did not call in prior to the beginning of the work shift on December 5, 2018 to report her impending absence, as required by company policy.

Ms. Downing disputes the number of absences attributed to her by Mr. Kraber. Ms. Downing did not know that her job was in jeopardy due to attendance. She feels that her discharge took place because she had complained to upper management on December 4, 2018 about Mr. Kraber's failure to give her holiday pay.

REASONING AND CONCLUSIONS OF LAW:

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden of proof in this matter. 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 is not necessarily serious enough to warrant a denial of unemployment 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. App. 1992).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings, however, it must first establish that the most recent absence that prompted the decision to discharge the employee was not excused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Absence related to illness or other good cause reasons are considered excused provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness or leaving early are forms of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that Ms. Downing did follow the employer's attendance policy in connection with her absence on December 5, 2018, by notifying the plant manager directly on December 4, 2018 that she had been in an automobile accident and would not be reporting to work the next day. At the time, Ms. Downing provided notice to her employer of her impending absence for the next work day, she did not know that she would be temporarily incarcerated later that night. Claimant reasonably believed that based upon the rollover traffic accident that she was involved in and her hospitalization that she would not be physically able to report to work on December 5, 2018 and notified her employer in advance of the work shift.

The Supreme Court of the State 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 job misconduct. The Court held that the absences must both be excessive and unexcused and that the concept includes tardiness, leaving early, etc. The Court further held, however, that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer.

The question before the administrative law judge in this case is not whether the employer had a right to discharge Ms. Downing for this reason, but whether the claimant is disqualified for unemployment insurance benefits. While the decision to terminate Ms. Downing may have been a sound decision from a management viewpoint, the administrative law judge concludes that the claimant did provide reasonable advance notice to the employer of her impending absence. The employer's general allegations of work related misconduct without additional evidence are not sufficient to result in a disqualification. See 871 IAC 24.32(4). The claimant's final absence was due to a medical issue and properly reported. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's unemployment insurance decision dated December 31, 2018, reference 02 is affirmed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn