

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TINA R MARTIN
Claimant

APPEAL NO. 15A-UI-04785-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

STELLAR MANAGEMENT GROUP V INC
Employer

OC: 03/29/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Stellar Management Group V (employer) appealed a representative's April 16, 2015, decision (reference 01) that concluded Tina Martin (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 June 18, 2015. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Susan Ashlock. The employer offered and Exhibit One was received into evidence. Exhibit D-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 9, 2013, as a full-time hourly sanitation worker. The claimant signed for receipt of the employer's handbook on July 30, 2014. The handbook indicates an employee may be terminated if she had five attendance occurrences. The employer issued the claimant a verbal warning on January 26, 2015, for attendance. The claimant properly reported illness on January 20 and 23, 2015.

On March 28, 2015, the claimant did not appear for work or notify the employer of her absence. On March 30, 2015, the claimant reported to the human resources manager that her supervisor was sexually harassing her and coming to her home. The manager told the claimant she would investigate. The manager investigated and the supervisor admitted to having relations with his subordinate. The manager told the supervisor he was not allowed to have relations with her.

On March 30, 2015, the manager told the claimant to call her office. The claimant properly reported her absence. The claimant was absent due to illness from the harassment. On March 31, 2015, the manager told the claimant she was being sent to a different department because of the harassment. The supervisor was not terminated, moved to a different department, or reprimanded. The claimant told the manager she was not sure if she were going

to return to work. The claimant properly reported her absence. The claimant was absent due to illness from the harassment. The employer terminated the claimant for having five absences. The claimant had a doctor's excuse for March 30 and 31, 2015. She returned to work on April 1, 2015, but her identification badge would not work because she had been terminated.

The claimant filed for unemployment insurance benefits with an effective date of March 29, 2015. The employer did not participate in the fact-finding interview on April 14, 2015.

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:

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).

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. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. 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 of absence was a properly reported illness which occurred on March 30 and 31, 2015. The claimant's absence does not amount to job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's April 16, 2015, decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css