

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TONYA E ROSENBOOM
Claimant

APPEAL 20A-UI-10488-BH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IH MISSISSIPPI VALLEY CREDIT UNION
Employer

OC: 06/14/20
Claimant: Appellant (1)

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Code section 96.5(2)(a) – Discharge for Misconduct
Iowa Administrative Code rule 871-24.32(1)(a) – Discharge for Misconduct
Federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act), PL 116-136, section 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

Tonya E. Rosenboom filed an appeal from the August 28, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held October 15, 2020. Rosenboom participated and testified. IH Mississippi Valley Credit Union (Credit Union) participated through Alison Anderson.

ISSUE:

Did the Credit Union discharge Rosenboom for job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

The Credit Union hired Rosenboom on September 16, 2019. Rosenboom worked full time as a member services representative. Rosenboom's immediate supervisor was Jessica Schaenbach. The Credit Union discharged Rosenboom on June 18, 2020.

The Credit Union does not have a written attendance policy. Rosenboom had 11 absences and six instances of tardiness in a six-month period. The Credit Union does not know why Rosenboom was absent or tardy on any of these occasions. The Credit Union issued Rosenboom a written warning for her absenteeism and tardiness.

A cash drawer offage occurs when an employee's cash drawer does not have the total it should based on the transactions during the employee's shift. Rosenboom's job description includes the requirement to have a manager count any drawer offage at the end of a shift. Rosenboom signed her job description, acknowledging this procedure. However, Rosenboom's supervisor

did not follow this procedure, which led Rosenboom to believe it was not necessary every time there was an offage.

Rosenboom had a drawer offage at the end of her shift. Rosenboom informed her manager, who was filling in for her regular manager, who was on leave. The manager did not count Rosenboom's offage because she was on the phone. Rosenboom waited for several minutes before leaving after checking with her manager.

There is disagreement between the parties on whether Rosenboom disregarded her manager's instructions by leaving. However, Rosenboom's firsthand account of what happened is more credible than the hearsay evidence presented by the Credit Union. The weight of the evidence shows Rosenboom did not think she was violating a manager directive by leaving the workplace.

Rosenboom reported to work the next day. She informed the assistant manager on duty of the offage from the day before. The assistant manager did not perform a count of her drawer. It is unclear why.

Rosenboom performed a recount. She discovered some money had stuck together. This meant Rosenboom's drawer had more money than it should have as opposed to less. She informed the assistant branch manager of what her recount showed.

On June 16, 2020, the Credit Union gave Rosenboom a final written warning regarding her attendance, because she was tardy on June 12 for an unknown reason and absent on June 15 because her daughter was ill, and her failure to follow procedures, due to the cash drawer incident in which a manager did not double-check her offage. Rosenboom was upset by the warning, so the Credit Union allowed her to take the remainder of the day off.

Rosenboom had used up all of her paid time off (PTO). She was scheduled to work on June 18, 2020. But Rosenboom sent a text message to a Credit Union manager, stating she was sick and would bring a doctor's note. Because of COVID-19, the Credit Union asked to see the doctor's note. Rosenboom did not respond for six hours. Ultimately, she informed the Credit Union manager that she was not sick; rather, her ex-husband had died of a drug overdose and she said she was sick because she was embarrassed.

The Credit Union discharged Rosenboom because she called in absent when she was out of PTO and misrepresented that she was sick to a manager when she was not. The Credit Union would have discharged Rosenboom regardless of the offage incident because of her prior attendance issues and misrepresenting to a manager that she was ill when she was not.

REASONING AND CONCLUSIONS OF LAW:

The evidence establishes the Credit Union discharged Rosenboom from employment due to job-related misconduct.

Iowa Code section 96.5(2)(a) disqualifies an individual from unemployment insurance benefits if the employer discharged the individual for misconduct. The statute does not define "misconduct." But Iowa Administrative Code rule 871-24.32(1)(a) does:

"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 Iowa Supreme Court has consistently held this definition accurately reflects the intent of the legislature in enacting the Iowa Employment Security Law. See, e.g., *Irving v. Employment Appeal Bd.*, 883 N.W.2d 179, (Iowa 2016) (superseded on other grounds by 2017 Iowa Acts ch. 70, § 3 (codified at Iowa Code § 96.5(11)) (citing *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 9 (Iowa 1982)).

The employer has the burden to prove misconduct that makes a claimant ineligible for unemployment benefits. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). In unemployment appeals, the question is not whether the employer made the right decision when it discharged the claimant in separating claimant. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The question is whether the claimant is entitled to unemployment insurance benefits under the law. *Id.*

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The Credit Union did not have a written attendance policy. Nor did it track why Rosenboom was absent. Absenteeism alone does not disqualify a claim from benefits. The absenteeism must be excessive and unexcused. Here, the Credit Union has failed to prove that any of Rosenboom's absences which led to written warnings were unexcused.

With respect to the offage incident, Rosenboom testified credibly that her regular manager did not follow the policy requiring a manager to double-check an offage by performing an independent count. Further, the policy clearly places that responsibility on the manager, not the member services representative, who is not in a position to give a manager a directive. To extent the policy was not followed, it was due to the decisions of the manager and assistant manager, not Rosenboom. Therefore, the offage incident does not constitute misconduct on the part of Rosenboom.

Lastly, there is the final incident that triggered Rosenboom's discharge. Rosenboom was out of PTO. After finding out her ex-husband died, she lied to a manager by stating she was ill, even though she was not, so she could take the day off work. It is more likely than not that Rosenboom did this because she was embarrassed about the overdose and because she did not have PTO she could use.

Lying is wrong. An employer has the right to expect honesty from its employees with respect to requests for time off under Iowa law. Standing alone, a claimant lying to a manager to take sick leave when she is not sick constitutes “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,” under rule 871-24.32(1)(a). Rosenboom is therefore disqualified from benefits under Iowa law.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The August 28, 2020 (reference 01) unemployment insurance decision is affirmed. The Credit Union discharged Rosenboom due to job-related misconduct. Benefits are withheld until such time as Rosenboom has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though Rosenboom is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if Rosenboom is eligible for such compensation for the week claimed.

This decision does not address whether Rosenboom is eligible for PUA. For a decision on such eligibility, Rosenboom must apply for PUA, as noted in the instructions provided in the “Note to Claimant” below.

A handwritten signature in black ink, appearing to read "Ben Humphrey", is written over a light gray rectangular background.

Ben Humphrey
Administrative Law Judge

October 16, 2020
Decision Dated and Mailed

bh/sam

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.**
- For more information about PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>

- To apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-application>