

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASMIN ALLEN LEWIS
Claimant

APPEAL NO: 15A-UI-00745-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARSDEN BLDG MAINTENANCE LLC
Employer

**OC: 12/07/14
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 8, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 12, 2015. The claimant participated in the hearing. Margarita Bernardino, Office Assistant; Rudy Castellanos, Area Manager; and David Moehle, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time general cleaner for Marsden Building Maintenance from March 5, 2013 to November 12, 2014. She was discharged after she called and said she did not have a ride to work and did not show up November 10, 2014.

The claimant was absent due to properly reported illness January 16, 2014; she was absent due to a properly reported medical procedure March 5 and 6, 2014; she was absent due to properly reported illness April 8, 2014; she was absent May 25 and May 29, 2014, due to two deaths in her family; and was absent October 20 through November 7, 2014, after being involved in a car accident that totaled her vehicle and injured her. She provided medical documentation to the employer about her absence following the car accident and received a release to return to “part-time” work. She was a part-time employee but the employer’s corporate office did not allow her to return until Friday, November 7, 2014, because it did not realize she was a part-time employee. The claimant reported for work November 7, 2014. She was scheduled to work Monday, November 10, 2014, but texted Area Manager Rudy Castellanos that she was going to be late because her ride was late. She asked Mr. Castellanos if he could pick her up but he was busy at a building and could not do so. While she was talking to him her ride called and said she would be a little later but she would pick up the claimant and the claimant relayed that information to Mr. Castellanos. The claimant was required to be in the building by 1:00 a.m. or she would be locked out. She became nervous about her friend picking her up when she

was not there between 8:30 and 9:00 p.m. and texted Mr. Castellanos to notify him her ride was not answering the phone and had not shown up but she never heard from Mr. Castellanos. The building did not get cleaned and the client asked that the claimant be removed from the account.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant was absent November 10, 2014, due to lack of transportation, that was the only unexcused absence listed by the employer and the stated reason for the termination. The claimant accumulated six absences between January 1 and October 19, 2014, including two absences for deaths in her family. She was in a car accident October 19, 2014, and not only was injured but lost her transportation as her vehicle was totaled. She was absent until November 7, 2014, because of her injuries and because when she was released to return to part-time work the employer's corporate office did not realize she was already a part-time employee.

The claimant had one unexcused absence and did not receive any verbal or written warnings about her attendance. Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The January 8, 2015, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs