

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MALLORY R MEYER

Claimant

APPEAL NO. 13A-UI-03395-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTEGRATED CONNECTION LLC

Employer

OC: 02/24/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Integrated Connection, LLC filed a timely appeal from a representative's decision dated March 15, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on April 23, 2013. Claimant participated. The employer participated by Mr. Muhammad Abu-nameh, Company Owner.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Mallory Meyer began employment with Integrated Connection, LLC in October 2012. The claimant was employed as a part-time telephone customer service representative and was paid by the hour. Her immediate supervisor was the company owner, Muhammad Abu-nameh. Ms. Meyer was discharged on February 21, 2013 based upon a number of events that the employer concluded demonstrated that the claimant did not have the attributes that the employer desired in a customer service representative.

On February 21, 2013, the claimant had called in before the beginning of her 10:00 a.m. work shift to request permission to report to work one hour later. Ms. Meyer had been at the emergency room the preceding night and had difficulty sleeping following her hospital visit. In the days preceding her discharge, Ms. Meyers had been absent from February 13, however she had reported back to work on February 19. When the claimant returned to work on that date she did not provide a doctor's note although she had stated on two occasions during her period of absence that she was going to either visit the doctor or a hospital about a medical condition. Ms. Meyers had also left early on the next day Wednesday, February 20, indicating that she was ill. The employer had learned that Ms. Meyer had worked on Saturday night, February 19, 2013 during the period that she had reported to the employer that she was too ill to report for work. The employer concluded based upon the series of events that Ms. Meyer was not

dependable and also concluded that the claimant continued to have a problem with punctuality in reporting to work and reporting back from lunch breaks after being verbally reminded about the issue by the employer.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

871 IAC 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.

871 IAC 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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d

262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial job insurance benefits. Such misconduct must be “substantial.”

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

In this matter the evidence in the record establishes that the employer made a management decision to terminate Ms. Meyer because she had been absent or had left early at times for medical reasons and because the employer believed the claimant had not been punctual at times in reporting for work or returning from lunch breaks and that although the employer had accommodated the claimant by extending her lunch period, the claimant continued to still eat at her desk after taking her full lunch period for other purposes. Although dissatisfied about these various aspects about the claimant's employment, the employer did not issue the claimant written or progressive warnings putting the claimant on notice that her employment was in jeopardy for these reasons. The employer instead chose to verbally remind the claimant about the company's job expectations without placing the claimant on notice that her employment was in jeopardy for those reasons.

The question before the administrative law judge is not whether the employer had a right to discharge Ms. Meyer for these reasons, but whether the discharge is disqualifying under the provision of the Employment Security Law. While the decision to terminate Ms. Meyer may have been a sound decision from a management viewpoint, the administrative law judge must conclude that because the employer had not previously sufficiently warned the claimant about any of the issues leading to the job separation the employer has not met its burden of proof to establish that the claimant acted deliberately or negligently in violation of company policy, procedure or prior warnings. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed and reasonable notice should be given.

For the reasons stated herein the administrative law judge concludes that the claimant was discharged under non disqualifying conditions. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 15, 2013, reference 01, is affirmed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css