

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**KAREN E WALKER**  
Claimant

**APPEAL NO. 18A-UI-03331-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PILOT TRAVEL CENTERS LLC**  
Employer

**OC: 02/11/18**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Pilot Travel Centers (employer) appealed a representative's March 5, 2018, decision (reference 01) that concluded Karen Walker (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 April 6, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Debra King, Travel Center General Manager, and Jill Foster, Guest Service Lead. 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 7, 2017, as a full-time guest service leader. The employer has a handbook and normally gives them to employees at orientation. The handbook contains a progressive disciplinary system. An employee is issued a coaching, a written warning, and a final written warning before she is terminated.

On January 8, 2018, the employer issued the claimant a coaching. The coaching stated, "Karen has been scheduled at 10 pm and is choosing to come at 10:45 or later without approving with anyone or communication about this. As manager it is imperative she be on time for all shifts. This has happened at least 3 times now. Any other issues will be a document." Also on January 8, 2018, the employer issued the claimant a written warning for failure to keep complete food temperature logs. The warning stated that further infractions would result in more documentation. The claimant signed the electronic record of the warning but was not given a copy. On January 15, 2018, the employer issued the claimant a written warning for failure to keep complete food temperature logs. The employer notified the claimant that further infractions could result in termination from employment. Again, the claimant signed the electronic record but was not given a copy.

On February 10, 2018, the claimant was not scheduled to work. Her daughter was admitted to the hospital. The claimant contacted one of her cashiers and asked him to cover her shift for one hour on February 11, 2018. The cashier agreed. As a manager, the claimant thought this was an acceptable practice. On February 11, 2018, the claimant arrived at work at the agreed upon time with a doctor's note. She changed the schedules to reflect the correct times. On February 14, 2018, the employer terminated the claimant for changing the schedules and being tardy on February 11, 2018.

The claimant filed for unemployment insurance benefits with an effective date of February 11, 2018. The employer provided the name and number of Brandon Davis as the person who would participate in the fact-finding interview on March 2, 2018. The fact finder called Mr. Davis but he was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided some documents for the fact finding interview. The employer did not identify the dates or submit the specific rule or policy that the claimant violated which caused the separation.

#### **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, 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).

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

After the documentation of January 8, 2018, there is no evidence the claimant had any attendance issues the employer was concerned about except for the situation on February 11, 2018. The claimant followed the employer's instructions listed in the January 8, 2018, documentation and communicated with her cashier on February 10, 2018. The January 8, 2018, documentation instructed the claimant to seek approval or communicate with someone. She did communicate with her cashier. The employer did not tell her in the documentation with whom she was to communicate.

The claimant was absent for one hour on February 11, 2018, because her daughter was in the hospital. She covered her shift. Her conduct does not rise to the level of misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's March 5, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/rvs