

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BROOKE E SEAMER
Claimant

APPEAL NO. 14A-UI-08680-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITIZENS FIRST BANK
Employer

OC: 07/27/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Citizens First Bank (employer) appealed a representative's August 15, 2014, decision (reference 01) that concluded Brooke Seamer (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 September 10, 2014. The claimant participated personally. The employer participated by Heather Farwell, Tell/Supervisor/Officer, and Kathy Forrest, Executive Vice President. The employer offered and Exhibit One 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 April 24, 2012, as a full-time teller. The claimant signed for receipt of the employer's handbook. The handbook indicates an employee should notify her supervisor thirty minutes prior to the start of her shift. The claimant worked 7:15 a.m. to 3:45 p.m., Monday through Friday and some Saturdays.

On January 10, 2014, the employer issued the claimant a written warning for absenteeism. The employer notified the claimant that further infractions could result in termination from employment. The employer issued the claimant a performance improvement plan regarding absenteeism on May 19, 2014. On July 9, 2014, 2014 the employer issued the claimant a performance improvement plan regarding absenteeism. The employer notified the claimant that further infractions could result in termination from employment. The employer also notified the claimant that if she were going to be absent she had to report her absence to either Barb or Heather. The claimant was absent due to illness six times and personal issues ten times. She was tardy for work five times.

On July 23, 2014, the claimant experienced the first migraine headache of her life and properly reported her absence from work. On July 24, 2014, the claimant's supervisor called the

claimant at 6:00 a.m. The claimant missed that call but immediately returned the supervisor's call. She told the supervisor she was still sick and would not be at work. The claimant thought she had informed the employer of her absence and, due to her migraine, forgot about the requirement to inform either Barb or Heather or her supervisor. The claimant returned to work on July 25, 2014. On July 28, 2014, the employer terminated the claimant for excessive absenteeism.

The claimant filed for unemployment insurance benefits with an effective date of July 27, 2014. The employer participated personally at the fact-finding interview on August 14, 2014, by Heather Farwell.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged but there was no 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). Unreported absences do not constitute job misconduct if the failure to report is caused by mental incapacity. Roberts v. Iowa Department of Job Service, 356 N.W.2d 218 (Iowa 1984). 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 an improperly reported illness. The claimant's absence does not amount to job misconduct because the claimant could not properly report her absence due to mental incapacity. The claimant was ill and not thinking correctly. She reported her absence to her supervisor. While suffering from the migraine she forgot she had to also contact another person. 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 August 15, 2014, 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