IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

EMANITE CHARLES Claimant **KERRY INC** Employer	**APPEAL 20A-UI-00474-S1-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 11/03/19** **Claimant: Respondent (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

STATEMENT OF THE CASE:

Kerry (employer) appealed a representative's January 6, 2020, decision (reference 05) that concluded Emanite Charles (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 held on February 4, 2020. The claimant participated personally. The employer participated by Annie Marple, Human Resources Manager. The administrative law judge took official notice of the administrative file. Exhibit D-1 was admitted into evidence.

The hearings for 20A-UI-00474-S1-T and 20A-UI-00623-S1-T were held concurrently because the parties and/or issues were related.

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 June 24, 2019, as a full-time production operator. She signed for receipt of the employer's handbook on June 24, 2019. The handbook indicated that employees who accumulated seven attendance points in a rolling twelve-month period would be terminated.

The claimant properly reported her absences on October 11, November 8, 12, and 15, 2019. Her absences were due to her own illnesses or her child's illnesses. She received one attendance point for each absence. On November 14, 2019, she did not report her absence and was assessed three points. On October 17, 2019, she had a flat tire on her way to work and was tardy. The employer issued her .5 points. On November 18, 2019, the claimant was involved in a vehicle accident before work. She was injured and went to the emergency room. The claimant arrived at work late with a doctor's note. The employer assessed her .5 attendance points.

On November 20, 2019, the employer issued the claimant a final written warning for attendance. She had accumulated eight attendance points. The employer notified the claimant that further infractions could result in termination from employment.

Before work on December 9, 2019, the claimant was at the emergency room with her child. As she was leaving work on December 10, 2019, the employer asked if she would stay and work overtime hours. The claimant said she could not on that day because she had to go home and check on her child. The employer usually scheduled overtime a week in advance but this had not been prescheduled.

On December 10, 2019, the employer telephoned the claimant at home and terminated her for refusing to work overtime. The employer considered this another attendance violation. The claimant was terminated with nine attendance points.

The claimant filed for unemployment insurance benefits with an effective date of November 3, 2019. She reopened her claim on December 1, 2019, and filed an additional claim on December 8, 2019. The claimant has received no unemployment insurance benefits since her separation from employment. The employer's representative provided the name and number of Rhonda Caloia as the person who would participate in the fact-finding interview on December 30, 2019. The fact finder called Ms. Caloia but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. No one responded 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.
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> 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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employees reason for noncompliance. *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa App. 1985).

An employer has a right to expect employees to follow instructions in the performance of the job. Workers also have an expectation of knowing when their shift ends. It is unreasonable to expect employees with responsibilities of all sorts to work overtime without any notice. The employer asked the claimant to work and the claimant declined. She declined because she had a child at home that had been in the emergency room less than twenty-four hours earlier. The employer did not indicate she would be terminated if she refused overtime. The claimant's refusal was not unreasonable. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's January 6, 2020, decision (reference 05) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/scn