

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRYSTAL K WARREN
Claimant

APPEAL NO. 14A-UI-11300-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAS L CARDELLA & ASSOCIATES INC
Employer

OC: 10/05/14
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Thomas L Cardella & Associates (employer) appealed a representative's October 23, 2014, decision (reference 01) that concluded Crystal Warren (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for January 21, 2015, in Cedar Rapids, Iowa. The claimant was represented by Daniel Zeno, Attorney at Law, and participated personally. The employer was represented by Beth Crocker, Hearings Representative, and participated by Michelle Trevitt, Program Manager. The claimant offered and Exhibit A 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 29, 2013, as a full-time John Deere agent. On September 17, 2014, the employer issued the claimant a written warning for absences. The claimant had a doctor's note for at least one of the four absences. Two of the absences were due to deaths in the family. The employer told her not to worry because the claimant would not be terminated if she had a doctor's note for her absence.

On September 18, 2014, the claimant left work early because her daughter was ill. She provided the employer with a doctor's note. On September 22, 2014, the employer called the claimant in for a meeting. The employer showed the claimant a document that said termination and listed the claimant's absence on September 18, 2014. The employer told the claimant to sign the document. The claimant refused. The employer asked the claimant if she was quitting. The claimant did not think she had a job. She went to her desk, retrieved her purse, and left work.

The claimant filed for unemployment insurance benefits with an effective date of October 5, 2014. Based on the testimony of the claimant, the employer provided written statements for the fact-finding interview on October 22, 2014. Based on the fact-finder's worksheet, the fact finder attempted to call the employer for information but the employer did not answer the telephone.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 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). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible. The employer had lapses of memory during her testimony. The claimant's recollections make sense in the context of her work history.

DECISION:

The representative's October 23, 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/pjs