

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER J BROWN

Claimant

IOWA WORKFORCE DEVELOPMENT

Employer

**CASE NO. 22IWDUI0015
IWD APPEAL NO. 21A-UI-16155**

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 6/6/2021
Claimant: Appellant (2)**

Iowa Code § 96.5(2)(a) – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jennifer Brown (Brown) filed a timely appeal from a July 13, 2021, unemployment insurance decision that denied unemployment benefits based on excessive unexcused absenteeism after being warned. A telephone hearing was held on September 7, 2021. The parties were properly notified of the hearing. The claimant participated and was represented by attorney Marlon Mormann. David Steen represented Iowa Workforce Development (IWD). Penny Maxwell and Kimberly Stoker testified.

IWD submitted Exhibits 1-10, which were admitted into the record without objection. Brown submitted Exhibits A-U, which were also admitted without objection. Official notice was taken of the documents in the administrative file.

ISSUE:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Jennifer Brown was employed as a full-time clerk at IWD. She began working at IWD in October 2017. Her last day of work was June 4, 2021. Brown's direct supervisor was Penny Maxwell, assistant workers' compensation commissioner. Brown was terminated by Maxwell on June 4 because of unapproved absences on June 2 and 3. (Brown testimony.)

Brown received and signed a letter from IWD on June 4 documenting her termination. The letter specified her employment was terminated because she violated a work directive issued on March 15, 2021, regarding absenteeism and violated work rules regarding absences on June 2 and 3. IWD alleged Brown violated the following work rule regarding leave without pay, which notes "[a]n employee must request to take an unpaid leave of absences by written request and written approval to the appropriate Division Administrator." (Ex. 1.)

IWD provided documentation of Brown's absences from work. Brown received a letter from IWD dated March 15, 2021, specifying leave requests must be in a timely manner. (Ex. 3.) An IWD investigation led to a May 5, 2021, written reprimand because Brown was absent from work on April 28-29. (Ex. 4.) An investigatory interview was held May 25, 2021, with Maxwell, Stoker, and Brown because Brown was absent due to illness on May 18, 19, 21, and 24 and was out of paid leave. (Ex. 5.) These May 2021 absences resulted in a Notice of Alternative Discipline in Lieu of Suspension Without Pay, which is equal to a one-day suspension. (Ex. 6.) Brown received a three-day paper suspension on May 28, 2021, because of an absence on May 27. This paper suspension was labeled "final warning." (Ex. 7.)

Brown emailed Maxwell and notified her that she was not well and would not be at work on June 2. Maxwell responded and said the time would be unauthorized without pay. (Ex. 8.) Brown emailed Maxwell on June 3 and informed her she was still not well and would not be at work. (Ex. 10.) A final investigatory interview was held June 4, 2021, with Maxwell, Stoker, and Brown. (Ex. 9.) Brown was terminated during this meeting.

Brown submitted emails and notes from doctors from the dates of her reported absences from work. (Ex. A-U.) Brown's minor son has special needs and sometimes requires Brown to take time off work to care for him. (Ex. U; Brown testimony.) Brown's termination was based on

absences on June 2 and 3. Brown emailed Maxwell on June 2 and 3 and notified Maxwell that she was not well and would not be at work. (Ex. B, D.) Brown also provided doctor's notes for these absences. (Ex. A, C.) IWD requires employees to report absences 30 minutes prior to the start of a shift, and Maxwell acknowledged Brown properly reported her absences prior to the start of her work shifts. IWD's decision to terminate Brown was based on Brown's unauthorized leave without pay on June 2 and 3. IWD engaged in progressive discipline of Brown, but Brown continued to miss work. (Maxwell testimony.)

Stoker is a human resources professional for IWD and was present with Brown was terminated. Stoker noted Brown had frequent absences, and IWD was concerned these absences would continue. (Stoker testimony.)

Brown specified all the absences listed in IWD's progressive discipline occurred because she was ill or her child was ill. She always called or emailed 30 minutes prior to her shift when she was not able to work. (Brown testimony.)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the July 13, 2021, unemployment insurance decision that found Brown ineligible for benefits is reversed.

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:

Iowa Administrative Code rule 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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy. However, if the employer fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

It is uncontested Brown was terminated from her clerk position at IWD because Brown was absent on June 2 and 3. Although Brown had used all of her paid leave, Brown properly reported her June 2 and 3 absences to her supervisor prior to each shift. Brown was absent on June 2 and 3 because she was ill.

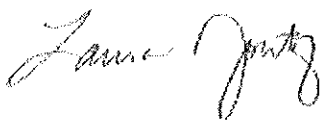
Absences can rise to the level of misconduct if the absences are both excessive and unexcused. See *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984). Absences due to illness are deemed excused if the employee properly notifies the employer. Iowa Admin. Code r. 871-

24.32(7). The Iowa Court of Appeals addressed a similar issue in *Gaborit v. Sabre Communications Corp.*, 743 N.W.2d 554 (Iowa Ct. App. 2007). In *Gaborit*, the employee was denied unemployment benefits at the administrative level because the employee failed to provide a doctor's note following an illness. *Id.* at 556. The employee properly reported the absence. The Iowa Court of Appeals held the employee was eligible for benefits because her properly reported final absence due to illness was excused as a matter of law. *Id.* at 558.

I find Brown's conduct did not rise to the level of misconduct. Her absences were properly reported to her supervisor and were due to illness. Although IWD considered Brown's absences excessive, it is undisputed the absences were not unexcused. Therefore, Brown did not commit misconduct and benefits shall be allowed, provided she is otherwise eligible.

DECISION:

The July 13, 2021, unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.



Laura Jontz
Administrative Law Judge

September 15, 2021

Decision Dated and Mailed

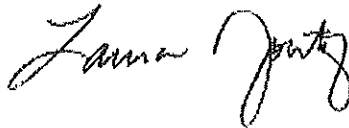
CC: Jennifer J Brown, Claimant (by first class mail)
Iowa Workforce Development, Employer (by first class mail)
David Steen, Iowa Workforce Development (by email)
Marlon Mormann (by first class mail – 3320 Kinsey Ave, Des Moines, IA 50317)
Joni Benson, IWD (by AEDMS)

Case Title: BROWN V. IOWA WORKFORCE DEVELO/DIV OF LABOR

Case Number: 22IWDUI0015

Type: Order

IT IS SO ORDERED.

A handwritten signature in cursive script, reading "Laura Jontz".

Laura Jontz, Administrative Law Judge