

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA K EPPERSON
Claimant

APPEAL NO. 15A-UI-07100-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

OC: 05/24/15
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Whirlpool Corporation filed a timely appeal from a representative's decision dated June 10, 2015, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice of was provided, a telephone hearing was held on July 27, 2015. Although the claimant submitted a telephone number for the hearing she was not available at the telephone number provided. Repeated messages were left for the claimant. The employer participated by Ms. Jennifer Wagner, Human Resource Generalist. Employer's Exhibits A through G were admitted in the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all evidence in the record, the administrative law judge finds: Amanda Epperson was employed by Whirlpool Corporation from April 3, 2014 until May 21, 2015 when she was discharged for excessive absenteeism. Ms. Epperson was employed as a full-time assembler and was paid by the hour. Her last supervisor was Ms. Amy Stevens.

Ms. Epperson was discharged after she exceeded the permissible number of attendance infractions allowed under the company's "no-fault" attendance policy. Under the terms of the policy employees are subject to termination if they accumulate five or more attendance infractions within a rolling 90-day period. Employees are warned if they accumulate two infractions and receive a second warning if two more infractions take place, employees are subject to discharge if they have additional infractions within the 90-day rolling period.

On April 7 the claimant left early due to illness, on April 8 the claimant was absent due to illness, she left early for personal reasons on April 21 and was absent on May 1 for personal reasons. On May 8 Ms. Epperson left early due to illness, on May 11 she did not call or notify the employer of her impending absence and on May 12 she was absent for personal reasons. The final infraction that caused the claimant's discharge took place on May 19, 2015, when Ms. Epperson went home early because she was ill. The claimant was aware of the company policy and had been warned by the company before her discharge.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

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).

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

In discharge cases the employer has the burden of proof to establish disqualifying conduct on the part of a claimant. See Iowa Code Section 96.6(2). Misconduct must be substantial in order to justify the denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v Employment Appeal Board, 616 N.W. 2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation or over sleeping are considered unexcused. Absences related to illness are considered excused providing the employee has complied with the employer's policy regarding notifying the employer of the absences. Tardiness or leaving early are a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that the claimant's final infraction that caused her discharge took place when Ms. Epperson was ill and requested permission to leave work early because of the illness. The evidence in the record also establishes that the majority of the claimant's attendance infractions were due to illness and were properly reported to the employer and because they were due to illness and properly reported they are considered "excused" for unemployment insurance purposes.

The question in this case is not whether the employer had a right to discharge Ms. Epperson for the above-stated reasons, but whether the discharge is disqualifying under the provisions of the employment security law. While the decision to terminate Ms. Epperson may have been a sound decision from a management viewpoint, based upon the evidence in the record and the application of the appropriate law the administrative law judge concludes that the claimant's discharge was not disqualifying. Accordingly, the claimant is eligible to receive unemployment insurance benefits, providing that she meets all eligibility requirements of Iowa law each week that she claims unemployment insurance benefits.

DECISION:

The agency representative's decision dated June 10, 2015, reference 01, is affirmed. The claimant was discharged from employment under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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