

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VANESSA L SAFFOLD
Claimant

APPEAL NO. 17A-UI-06544-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEABOARD FOODS SERVICES INC
Employer

OC: 12/18/16
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Seaboard Foods Services (employer) appealed a representative's June 19, 2017, decision (reference 02) that concluded Vanessa Saffold (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 July 14, 2017. The claimant participated personally. The employer participated by Erin Hyde, Human Resources Supervisor, and Brock Puffett, Multi Site Supervisor. Exhibit D-1 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 January 3, 2017 as a full-time team member. On February 3 2017, the employer issued the claimant a written warning for being absent one day for a family emergency. She properly reported her absence. On March 28, 2017, the employer issued the claimant a final written warning for being absent one day for a properly reported illness. The employer notified the claimant that further infractions could result in termination from employment.

Three times the claimant reported problems with a co-worker to her supervisor. Finally the supervisor told the claimant to report the problem to human resources. The claimant followed the instructions. The human resources supervisor said she would get back to the claimant but never did. On March 3, 2017, the employer issued the claimant a written warning after she and the co-worker were involved in an argument. The warning said the employer has a zero tolerance policy regarding harassment but it had witnessed the two harassing each other on numerous occasions. The co-worker quit work. The employer notified the claimant that further infractions could result in termination from employment.

After the employer issued the claimant three warnings it gave the claimant the employer's handbook on April 14, 2017. The handbook contained the employer's attendance policy. It also contained conduct that would result in suspension pending investigation. An employee may be terminated if she makes unprotected, false, defamatory and/or malicious statements about a supervisor.

On May 19, 2017, another employee agreed to work the claimant's shift on May 21, 2017, if the claimant's father had to have emergency surgery. On the evening of May 20, 2017, the claimant discovered the surgery was going to take place but she could not reach the employee. From the hospital in a critical situation, the claimant called her supervisor's home number to let him know she would not be at work on May 21, 2017, and she could not reach the other employee. The supervisor did not ask for information about the claimant's father's condition or offer to help the claimant find a replacement. He told the claimant it was her responsibility to work or find a replacement. The claimant told him he was a bad supervisor. She said he gave her no motivation to come to work and that she did not believe he knew enough about his job. The claimant said she would be with her father on May 21, 2017. The claimant arrived at work on May 22, 2017. Later that day she was terminated.

The claimant filed for unemployment insurance benefits with an effective date of December 18, 2016. The employer participated personally at the fact finding interview on June 16, 2017, by Erin Hyde.

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.

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). The employer terminated the claimant for making an unprotected, false, defamatory and/or malicious statement about a supervisor. The claimant said three things. She said the supervisor was a bad supervisor, he gave her no motivation to come to work and she believed he did not know enough about his job. All three were beliefs the claimant held and were not proven to be false in the hearing. The claimant was not given a handbook until after she was given three warnings. She complained about an employee four times and then was given a warning when the situation escalated. The warning states the employer has a zero tolerance policy for harassment but watched harassment on multiple occasions.

In addition, the statements were made outside of the work setting. Not finding a replacement while in the midst of a family emergency is not misconduct. The employer did not meet its burden of proof to show job-related misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's June 19, 2017, decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs