

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DIANE L STEIMEL
Claimant

COVENANT MEDICAL CENTER INC
Employer

APPEAL 20A-UI-00277-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/08/19
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:

Covenant Medical Center (employer) appealed a representative's December 31, 2019, decision (reference 01) that concluded Diane Steimel (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 January 29, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Dianne Maravetz, Home Health Manager; Susan Bechthold, Leave of Absence Specialist; Jamie Caesar, Human Resources Recruitment Representative; and Diane Lyman, Manager of Colleague Health. The administrative law judge took official notice of the administrative file.

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 November 11, 2002, as a full-time home care aid. The employer had a handbook the claimant may have received when she was hired. It had a policy that provided employees with occupational injuries a maximum length of leave of six months, unless additional leave was requested. The request would be reviewed by the employer. The employer was unaware of the review process or the requirements for review.

The claimant suffered a work-related injury on January 24, 2019. She worked until the date of her surgery on May 2, 2019. She was granted Family Medical Leave (FMLA) from May 2, 2019, to July 24, 2019. She requested and was granted general medical leave from July 25, 2019, through November 11, 2019.

The employer was in contact with the claimant and the workers' compensation insurance provider. It knew the claimant needed more than six months before she would be released by her physician to return to work. The employer did not mention a review or extension to the

claimant. The employer has a verbal policy of terminating employees who have exhausted their six-month medical leave who do not have a doctor's appointment scheduled in the near future at which they would be released to return to work. The employer applies this unwritten policy to employees with occupational and non-occupational injuries.

On the last day of her leave, November 11, 2019, the employer called and terminated the claimant. The claimant was terminated because she did not have a doctor's appointment scheduled in the near future to release her to return to work. On November 14, 2019, the employer sent the claimant a letter of termination. It did not issue the claimant any warnings prior to her separation. On January 8, 2020, the claimant was released to return to work without restrictions.

The claimant filed for unemployment insurance benefits with an effective date of December 8, 2019. The employer participated personally at the fact finding interview on December 27, 2019, by Diane Lyman.

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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Services v. Jackson and Employment Appeal Board*, 810 N.W.2d 532 (Iowa Ct. App. 2012).

The employer did not provide any evidence of job-related misconduct. It terminated the claimant while she was absent, under medical care for a work-related injury. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's December 31, 2019, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn