

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANN K GRAVES
Claimant

APPEAL NO. 17A-UI-05407-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARCO LTD
Employer

OC: 04/30/17
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Parco (employer) appealed a representative's May 17, 2017, decision (reference 01) that concluded Ann Graves (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 June 6, 2017. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Jessica Walsh, Director of Human Resources. The employer offered and Exhibit 1 was received into evidence. 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 30, 2017, as a full-time general manager. The claimant signed for receipt of the employer's handbook when she was hired. The employer did not issue the claimant any warnings until April 12, 2017.

On April 12, 2017, the claimant left work for a few minutes to take something to her daughter at school. The claimant left an assistant manager in charge while she was gone. On April 13, 2017, the employer talked to the claimant about the incident and issued the claimant a written warning. The employer notified the claimant that further infractions could result in termination from employment. On May 2, 2017, the employer terminated the claimant for the events that occurred on April 12, 2017. The delay in termination may have been to find someone to work in the claimant's role or to wait for the president of the company to make a decision.

The claimant filed for unemployment insurance benefits with an effective date of April 30, 2017. The employer participated personally at the fact finding interview on May 16, 2017, by Jessica Walsh.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not 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).

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. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on April 12, 2017. The claimant was not discharged until May 2, 2017. The employer has failed to provide any evidence of

willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

The evidence presented is inconsistent as to the number of dates the claimant left the store. At the fact finding interview neither the claimant nor the director of human resources mention more than one incident of leaving the store unattended. The director of human resources identifies the absence as April 13, 2017. The Corrective Action Notice lists the date of occurrence as April 12, 2017. The termination notice does not offer any clarification. The director of human resources testified at the appeal hearing that the claimant left work on April 12 and April 13, 2017. The administrative law judge finds the claimant's statement to be more credible because she was the only eye witnesses to the events for which she was terminated. This administrative law judge finds the e-mail to also be credible in providing the date of the incident. The employer had access to the time cards and witnesses but did not provide them at the hearing. This designation does not change the outcome of the decision. Even if two days were considered, the employer did not provide a final incident within the definition of the law.

DECISION:

The representative's May 17, 2017, decision (reference 01) 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