

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGEL A MALLIE
Claimant

APPEAL NO. 14A-UI-04444-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 03/09/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated April 24, 2014, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on May 19, 2014. Claimant participated. The employer participated by Mr. Treve Lumsden, Hearing Representative. The employer's witnesses were Ms. Phyllis Farrell, Unemployment Insurance Consultant, Cheryl Mercer, Administrator and Cindy Wiersame, Administrator.

ISSUE:

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

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Angel Mallie was employed by Care Initiatives from July 3, 2013 until March 12, 2014 when she was discharged from employment. Ms. Mallie was employed as a full-time certified nursing assistant and was paid by the hour. Her immediate supervisor was the director of nursing.

Ms. Mallie was discharged on March 12, 2014 after she failed to report for work on Monday, March 10, 2014 and Tuesday, March 11, 2014. Ms. Mallie had normally been scheduled to work 11:00 p.m. until 7:00 a.m., but the claimant's work schedule had been changed effective March 24, 2014 because the claimant had been injured and placed on light duty. After the claimant had been changed to a light-duty schedule, the employer made changes to the claimant's work schedule and believed that the claimant was aware of the changes.

Ms. Mallie was not aware that the schedule had been changed for March 10 and 11, and therefore did not report for work. When Ms. Mallie next reported for scheduled work on Wednesday of that week she was informed that she as being discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged for intentional misconduct. It does not.

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:

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).

In discharge cases the employer has the burden of proof. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance 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. App. 1992).

An employer may discharge an employee for any number of reasons, or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

In the case at hand the evidence establishes that Ms. Mallie's work schedule had been changed after she had been limited to light-duty work. The claimant had noted initial change in her scheduling and had reported for scheduled work, but failed to notice that the employer had changed her work schedule requiring the claimant to report for work at 10:00 a.m. on Monday, March 10 and Tuesday, March 11, 2014. The claimant had not been directly informed of the scheduling change and reasonably believed that she had those days off work. Because the claimant did not know that she was scheduled for work she did not report and was not aware that the employer was attempting to contact her on those days. Ms. Mallie reported for work at her scheduled time on Wednesday, March 12, 2014 and was informed at that time the scheduling had been changed and that she was being discharged from employment.

The administrative law judge concludes based upon the evidence in the record that the claimant's failure to report for work on March 10 and March 11, 2014 was not due to intentional disqualifying misconduct. While the decision to terminate the claimant for failing to report may have been a sound decision from a management viewpoint, the claimant's discharge was not for misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated April 24, 2014, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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