

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LILLIAN WILLIAMS
Claimant

APPEAL NO: 13A-UI-12018-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 09/08/13

Claimant: Respondent (1/R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The University of Iowa (employer) appealed a representative's October 15, 2013 decision (reference 02) that concluded Lillian Williams (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 19, 2013. The claimant participated in the hearing. Debra Hughes appeared on the employer's behalf and presented testimony from one witness, Katherine Hall. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on March 5, 1980. Since about May 6, 2016 she worked full time as a library assistant at the employer's law school library. Her last day of work was September 12, 2013. The employer discharged her on that date. The reason asserted for the discharge was a fifth step of progressive discipline after failing to call in to report absences by the start of her shift.

The employer had given the claimant a first step written warning on March 11, 2013 for failing to call in on time. She then had a step two warning (with one-day suspension on June 3 for failing to follow a bathroom schedule, a step three warning (with three-day suspension) on June 12 for being on unpaid status, having used up available sick time, and a step four and final warning (with five-day suspension) on July 2 for being late for work.

On September 3 and September 4 the claimant called in absences, but did not do so by the start of her shift at 8:10 a.m. as required. On September 3 she called in about an hour after the start of her shift, and on September 4 she called in seven minutes after the start of her shift. The primary reason the claimant was late in calling in on those days was because she is suffering from some medical condition affecting her intestinal system for which she may need surgery. Due to this condition, on September 3 she was in her bathroom for over an hour; by the time she was well enough and had cleaned herself and the bathroom up, it was about 9:00 a.m. before she was able to call in to report her absence due to the illness. The same thing occurred on September 4, but to a lesser degree, but she was not able to call to report her absence due to the illness until seven minutes after the scheduled start of her shift.

Because the claimant did not properly report her absences by the start of the shift, this was considered to be a final disciplinary violation under the employer's progressive disciplinary process, and the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her failure to properly report her final absences after the prior steps of progressive discipline. Failing to properly report absences can be misconduct. *Cosper*, supra; *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984). In this case, the employer asserts that the final absences were not properly reported. However, it is clear that the claimant's failure to report her absence before the start of her shift was not volitional, as she was physically unable to do so due to her illness. Misconduct connotes volition. *Huntoon*, supra. While the employer may have had a good business reason for

discharging the claimant, it has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

An issue as to whether the claimant is adequately able and available for work so as to be eligible for unemployment insurance benefits arose during the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's October 15, 2013 decision (reference 02) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the able and available issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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