

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TROY J BERGFELD
Claimant

APPEAL NO. 18A-UI-08090-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

UTBW MO LLC
Employer

OC: 07/23/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Troy Bergfeld (claimant) appealed a representative's July 20, 2018, decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with UTBW MO (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 17, 2018. The claimant was represented by Raymond Lampert, Attorney at Law, and participated personally. Angel Atchison, friend and neighbor of the claimant, participated in the hearing. The employer participated by Robert Collins, General Manager.

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 28, 2017, as a full-time store manager. His doctor placed him on medical leave from April 18 to June 6, 2018, and told him not to work. The claimant understood the general manager to say he could work from home or be terminated.

Starting on April 18, 2018, the claimant did the store's payroll, ordering, and scheduling from home. He answered calls from the company's accountant and spoke with store employees about personnel issues. The claimant was in contact with the general manager about his actions. He got a driver to take him to the store when circumstances required. On May 22, 2018, the claimant did a walk through the store with the general manager.

On May 31, 2018, the claimant spoke with the general manager over the telephone about his recent physician's visit. The claimant's leave was extended to six months. The claimant asked the general manager about accommodations. The general manager told the claimant that today was his last day. The claimant asked the general manager if he would hold his job. The general manager said he would not and the claimant should file for disability.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer terminated the claimant for asking about accommodations. The employer had the claimant working in the same manner he had worked since April 18, 2018, even though it was contrary to the doctor's instructions. There was no final incident of misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's July 20, 2018, decision (reference 03) is reversed. 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