

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building, 4<sup>TH</sup> Floor  
Des Moines, Iowa 50319  
eab.iowa.gov**

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**PAULA S HILL**

Claimant

: **APPEAL NUMBER:** 22B-UI-16714

: **ALJ HEARING NUMBER:** 22A-UI-16714

:

and

:

**EMPLOYMENT APPEAL BOARD**

:

**DECISION**

**THE ANTHEM COMPANIES INC**

:

:

Employer

:

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 96.5-2 24.32-7

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Claimant, Paula Hill, worked for The Anthem Companies from January 10, 2022 through August 9, 2022 as a full-time service coordinator. The Employer provided the Claimant with a policy manual and a copy of their attendance policy which included topics such as work hours, overtime procedures, and PTO (paid time off.). The Claimant was to work from 08:00 am to 05:00 pm with a one-hour lunch break.

From April 2022 through June 2022, the Employer routinely reviewed its attendance policy with Claimant, including proper procedures to request time off, overtime policies, and a prohibition on working on holidays.

On several occasions, Claimant had violated the Employer's attendance policy by leaving early without properly notifying the employer and working overtime hours without prior approval. The Employer continued to instruct the Claimant (via email and team messaging) about the requirements for requesting time off, requesting overtime, and the timely filing of accurate timesheets.

On May 25, 2022, the Employer issued a warning to the Claimant regarding her work performance. The warning indicated Claimant was not timely and accurately completing reports, was not meeting expectations for completing documentation within timeframe, and was not properly requesting authorizations. The Employer issued Claimant a Corrective Action Plan which detailed the Employer's expectations that Claimant complete her work timely and accurately. The Employer also offered additional assistance to the Claimant to ensure she could meet these expectations through increased communication and use of a tracker to make sure she was completing her work as expected. The Corrective Action Plan was to be in place for the next 60 days, with reviews every 30 days.

On July 27, 2022, the Employer issued a written warning to the Claimant for working outside her hours, working overtime without approval, failing to timely submit her timesheet and working on a holiday, which she later omitted from her timesheet. The Employer reiterated their expectations of her in the written warning: Claimant was to file her timesheet daily and timely; her calendar was to be reflective of her work schedule; she was not to work outside her schedule, unless she requested time off in advance per company policy.

On August 4, 2022, the Claimant left work early without prior approval. After the time her shift would have ended, she emailed the Employer indicating she had left work. The Claimant then sent another email on August 5, 2022 indicating she would be leaving work again, and would make up that time the following day. The Employer terminated the Claimant on August 9, 2022 for failing to comply with its attendance policy after being repeatedly warned.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code Section 96.5(2)(a) (2021) provides:

*Discharge for Misconduct.* If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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.

The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665, (Iowa 2000) (quoting *Reigelsberger v. Employment Appeal Board*, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events.

The record establishes the Employer had an attendance policy, which the Claimant does not dispute. The Employer regularly, and personally, reviewed its policies with the Claimant via team meetings, emails and team messaging, which the Claimant also does not dispute.

While it was the Claimant's work performance that triggered the Employer's initiation of a Corrective Action Plan, that plan also served as a warning and reminder to the Claimant of her need to request prior authorization before leaving work. The fact the Claimant left work early without prior authorization on August 4, 2022 establishes the Claimant had an ongoing disregard for the Employer's attendance policy and expectations even after being warned on several occasions.

Emailing an absence after work hours is not the same as obtaining authorization prior to leaving the workplace that same day. The Employer has such a policy in place for a reason. Her unexpected disruption in the completion of work, and not getting her reports done in a timely fashion, impacts member services and other staff. The fact that she informed the Employer of her intention to leave work early again on August 5, 2022, indicates a disregard for the Employer's interest. The court *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990) held that a Claimant's continued failure to follow

reasonable instructions constitutes misconduct. In viewing this case a whole, we find the Claimant repeatedly disregarded the Employer's directive after several warnings. For this reason, we conclude the Employer satisfied their burden of proof.

Finally, since the Administrative Law Judge allowed benefits, and in so doing affirmed a decision of the claims representative, the Claimant falls under the double affirmance rule:

871 Rule of two affirmances. IAC 23.43(3)

a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.

b. However, if the decision is subsequently reversed by higher authority:

(1) The protesting employer involved shall have all charges removed for all payments made on such claim.

(2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.

(3) No overpayment shall accrue to the claimant because of payment made prior to the reversal of the decision.

Therefore, the Employer's account may not be charged for any benefits paid so far to the Claimant for the weeks in question, but the Claimant will not be required to repay benefits already received.

**DECISION:**

The administrative law judge's decision dated October 3, 2022 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for job-disqualifying misconduct. Accordingly, she is denied benefits until such time she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(2)"a".

No remand for determination of overpayment need be made under the double affirmance rule, 871 IAC 23.43(3), but still the Employer's account may not be charged.

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James M. Strohman