IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

MIKENNA M HOFFMAN
Claimant

GOOD SAMARITAN SOCIETY INC
Employer

APPEAL NO. 18A-UI-09814-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/02/18
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Good Samaritan Society (employer) appealed a representative's September 19, 2018, decision (reference 01) that concluded Mikenna Hoffman (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 October 9, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Bobbie Forch, Human Resources Director, and Amber Wilcox, Director of Nursing. 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 February 20, 2017 as a full-time certified nursing assistant. She signed for receipt of the Good Samaritan Society Handbook and the Addendum on February 20, 2017. The Addendum stated that an employee would be terminated if they failed to appear for work without report twice. The handbook's attendance policy stated that employees would be terminated if they accrued ten attendance occurrences in a consecutive twelve-month period.

On January 30, 2018, the employer issued the claimant a written warning for having accrued eight attendance points. The claimant did not appear for work or report her absence on October 8, 2017. Later, she reported she had been ill. The employer notified the claimant that further infractions could result in termination from employment.

On April 5, 2018, the employer issued the claimant a written warning for attendance for having accrued 8.75 attendance points. The warning notified the claimant that further infractions could result in termination from employment. The employer verbally told the claimant it would work with her.

On June 11, 2018, the employer issued the claimant a written warning for attendance for having accrued 13.25 attendance points. The employer's records indicate that the claimant did not appear for work or report her absences on April 27 or May 17, 2018. The claimant said she was ill on April 17, 2018, and reported her absence on May 17, 2018. The warning notified the claimant that further infractions could result in termination from employment. The employer continued to give the benefit of the doubt to the claimant because she was a good worker.

On August 17, 2018, the claimant reported her absence due to illness. The employer was not told about the call and recorded it as the claimant's fourth unreported absence. The claimant continued to work through August 23, 2018. On August 24, 2018, the employer terminated the claimant for absenteeism.

The claimant filed for unemployment insurance benefits with an effective date of September 2, 2018. The employer provided the name and number of Barbara Kumm as the person who would participate in the fact-finding interview on September 18, 2018. The fact finder called Ms. Kumm who said the fact finder should call Amanda Nobles. The next day, on September 19, 2018, the fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights for Ms. Nobles. The employer did not respond to the message. The employer provided some documents for the fact finding interview. The employer did not provide the name and number of an employee with firsthand information who could be contacted for rebuttal.

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).

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. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *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 of absence was a properly reported illness which occurred on August 17, 2018. The claimant's absence does not amount to job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's September 19, 2018, 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.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs