

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MARINA M MILLER
Claimant

APPEAL NO. 19A-UI-04720-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARDINAL CARE CORPORATION
Employer

OC: 05/12/19
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Cardinal Care Corporation (employer) appealed a representative's June 3, 2019, decision (reference 01) that concluded Marina Miller (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 held on July 5, 2019. The claimant did not provide a telephone number where she could be reached and, therefore, did not participate. The employer participated by Marc Johnson, Accountant. The administrative law judge took official notice of record.

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 December 28, 2015, as a full-time laundry person. The employer has a handbook which employees receive.

On July 7, 2016, the employer gave the claimant a written verbal warning for yelling at another employee in front of residents and nursing staff. On August 10, 2017, the employer issued the claimant a written verbal warning for smoking in a restricted outside area. The warnings indicated that further infractions could result in the claimant's termination from employment.

On February 14, 2018, the employer gave the claimant a final written warning for putting the facility's food in her purse and taking a donated coat for herself. The employer told the claimant she would be terminated if it happened again. A policy violation warning was issued for an unknown reason on May 3, 2019. The claimant was warned of termination.

On May 11, 2019, an employee saw the claimant through a window ride away from work on her bicycle with a plastic bag. The employee thought the bag contained clothing. When the claimant returned without the bag eleven minutes later, the employee asked the claimant about

the bag of clothes. The claimant said it was a bag of knickknacks that Susie in the kitchen gave her. The employee questioned Susie and Susie told the employee she did not give the claimant anything.

The incident was reported to the administrator. The administrator took the written statement of the employee. The administrator did not take the written statements of the claimant or Susie. No clothing or items were reported missing. On May 13, 2019, the employer terminated the claimant for taking a bag of clothes.

The claimant filed for unemployment insurance benefits with an effective date of May 12, 2019. The employer provided the name and number of Marc Johnson as the person who would participate in the fact-finding interview on May 30, 2019. The fact finder called Mr. Johnson but he was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided some documents for the fact-finding interview.

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). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide any evidence that any employer property was missing. An employee told the administrator that she saw the claimant take a plastic bag out of the employer's premises. The employer has not shown what was in the bag or if the items belonged to the employer. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's June 3, 2019, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn