IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MELTISHA D CRAWFORD
Claimant

CENTRAL IOWA HOSPITAL CORPORATION
Employer

APPEAL NO. 16A-UI-07139-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/05/16
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Meltisha Crawford (claimant) appealed a representative's June 24, 2016, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Central Iowa Hospital Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 18, 2016. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibit A 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 in March 2016, as a part-time hostess. The employer usually has employees attend Day One Orientation where they hear about the employer's policies and receive the employer's handbook. The claimant was unable to attend the orientation, did not hear about the employer's policies, and did not receive the employer's handbook. The claimant understood the employer had a five to seven minute grace period for signing in and out of one's shift. The claimant was tardy from time to time but always within the grace period. Twice the claimant forgot her badge but was at work on time. After a meeting, the claimant told her manager about the problem. The manager recorded the claimant's time of arrival at work as when the claimant told the manager she did not have her badge. The claimant requested the manager fix the time. The manager promised she would but never did. On May 7, 2016, the claimant was injured at work. She was scheduled to attend doctor's appointments for her injury.

On or about May 16, 2016, the employer issued the claimant a verbal warning for tardiness. On that day the claimant had an appointment with her doctor for her work injury. The warning included tardiness within the grace period time allotment and the times the claimant forgot her

badge that the manager did not fix. The employer notified the claimant that further infractions could result in termination from employment. The claimant asked the employer for a copy of the handbook. The claimant discovered the employer had a progressive disciplinary policy. She could expect the verbal warning to be followed by a written warning, probation, and discharge.

On May 19, 2016, the claimant was in a car accident. The claimant properly reported to the employer that her doctor said she could not work May 19 through May 22, 2016. The employer told her she did not have to call in each day. On May 22, 2016, the employer recorded her absence as a failure to report for work without notice to the employer. Another time, the claimant was 20 minutes tardy reporting to work due to problems with a rental car and transport of her four children. On June 6, 2016, the clamant was three to five minutes late. The employer terminated the claimant for excessive absenteeism.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 96.5-2-a provides:

> An individual shall be disqualified for benefits:
>
> 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 individual shall be disqualified for benefits 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. 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). 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 did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The claimant followed the employer's policies. Except for one, the claimant's absences were due to medical issues and properly reported or fell within the employer's five to seven minute policy. One absence is not excessive. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's June 24, 2016, decision (reference 01) is reversed. 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/pjs