

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

NYAKAR G CHAWECH
Claimant

APPEAL NO. 19A-UI-04659-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIEGWERK USA CO
Employer

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

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

STATEMENT OF THE CASE:

Siegwerk USA (employer) appealed a representative's June 4, 2019, decision (reference 01) that concluded Nyakar Chawech (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 3, 2019. The claimant did not provide a telephone number where she could be reached and, therefore, did not participate. The employer participated by Rachel Giddings, Human Resources Coordinator. 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 January 14, 2019, as a full-time production technician two. She signed for receipt of the employer's handbook on December 31, 2018. The attendance policy in the handbook indicates that an employee who accumulates eight occurrence points in a rolling twelve month period could receive "disciplinary action up to and including termination of employment."

The claimant reported all but one of her absences. She was absent without notifying the employer on February 26, 2019, and received two attendance points. On February 11, 2019, the claimant was absent for an appointment. On March 25 and 26, she was absent for medical reasons. She was absent for unknown reasons on April 9 and 29, 2019. The employer did not question the claimant about the nature of her absences. It issued her one attendance point for each reported absence. The employer issued her warnings on March 27, 2019, April 10, and April 30, 2019. The warnings indicated that further infractions could result in the claimant's termination from employment.

On May 12, 2019, the claimant properly reported to her supervisor that she would be absent because she was not feeling well. The employer assessed her one more point for a total of eight attendance points. On May 13, 2019, the employer terminated the claimant.

The claimant filed for unemployment insurance benefits with an effective date of May 19, 2019. The employer participated personally at the fact finding interview on June 3, 2019, by Rachel Giddings.

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 May 12, 2019. 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 June 4, 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