

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE C JACOBSON
Claimant

APPEAL NO. 15A-UI-07675-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRINITY REGIONAL MEDICAL CENTER
Employer

OC: 06/07/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Trinity Regional Medical Center (employer) appealed a representative's June 30, 2015, decision (reference 01) that concluded Danielle Jacobson (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 August 3, 2015. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Ted Vaughn, Human Resources Manager; Andrea Grimsley, Supervisor of Nutritional Services; and Nicholas Lucart, Food Service Manager.

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 August 4, 2014, as a full-time lead food service worker. The claimant received the employer's handbook. On March 2, 2015, the employer issued the claimant a written warning for improper work attire and performance. On April 29, 2015, the employer issued the claimant a performance appraisal indicating the claimant needed to improve her attendance. The appraisal said she had been formally written up for attendance issues.

On May 21, 2015, the claimant told the employer she needed June 5, 2015, off. The employer said the June 2015, schedule was complete, the claimant had to work that day, and she would have to find someone to work for her. The claimant tried but could not find another worker to work that day. The claimant's boyfriend's son was coming to stay and the claimant needed to care for him.

On June 5, 2015, the claimant did not appear for work or notify the employer of her absence. After June 5, 2015, the claimant appeared for work as usual. On June 8, 2015, the employer asked her about her absence. The claimant said she left a message. The claimant continued to work through June 10, 2015. On June 12, 2015, the employer terminated the claimant for her absence on June 5, 2015.

The claimant filed for unemployment insurance benefits with an effective date of June 7, 2015. The employer participated personally at the fact-finding interview on June 26, 2015, by Ted Vaughn.

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. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer terminated the claimant for one incident of absenteeism without warning. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's June 30, 2015, decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs