

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDY K COOK
Claimant

APPEAL NO. 13A-UI-03866-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

OC: 03/03/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.22(2)j(1) and (2) – Failure to Re-employ at End of Leave of Absence

STATEMENT OF THE CASE:

The Hon Company filed a timely appeal from a representative's decision dated March 22, 2013, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on May 6, 2013. Claimant participated. Although the employer filed an appeal in this matter, the employer stated that it would not participate in the hearing. Employer's Exhibit A was marked received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Brandy Cook began employment with The Hon Company in September 2011. Ms. Cook Was employed as a full-time production worker (upholsterer) and was paid by the hour. The claimant's last physical day on the job was March 15, 2012.

Ms. Cook did not report for scheduled work the next working day, March 16, 2012, because the claimant had been brutally attacked and severely injured. The claimant had not provided notice to the employer of her impending absence because she could not do so. The claimant had been severely injured and left in a remote area. Subsequently, Ms. Cook was notified that the employer had discharged her on March 16, 2012 for failing to report or provide notification that day. The claimant was reinstated effective March 16, 2012 after the claimant and her father explained the extenuating circumstances that had caused the claimant to be absent and unable to call. At the time of her reinstatement, Ms. Cook requested and was provided disability leave by the company. It appears that the disability leave of absence was left open-ended as the parties did not know the date that Ms. Cook would be medically and psychologically verified as able to return to work.

During the several months of 2012, The Hon Company sent Ms. Cook a number of letters requesting additional medical/psychological documentation so that the claimant's disability leave of absence could be extended. Although the claimant through her physicians supplied the requested medical and physiological documentation on each occasion, Ms. Cook was discharged on August 7, 2012 when she had exhausted all leave time available to her although the employer was aware that the claimant had not been released to return to work by her doctors.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits. She was not.

Iowa Code section 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.

871 IAC 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.

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 issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment

Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in a disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The Supreme Court of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of job misconduct. The Court held that the absences must be both excessive and unexcused and the concept includes tardiness, leaving early, etcetera. The court further held, however, that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer.

In this matter the employer was properly notified of Ms. Cook's inability to return to work because of medical/psychological issues. As the employer was properly notified, the absences are deemed excused.

871 IAC 24.22(2)j(1)(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

In this matter, the evidence establishes that the claimant was discharged because she had no more time available to her under the company's disability leave program. The employer was aware that the claimant could not return to work due to ongoing medical/psychological reasons. While the decision to terminate Ms. Cook may have been a sound decision from a management viewpoint, the evidence does not establish that the claimant was separated from employment

due to intentional disqualifying misconduct. Because the employer ended the leave of absence and discharged the claimant although she was medically unable to return to work, the administrative law judge concludes that the claimant was discharged for no disqualifying reason. Benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated March 22, 2013, reference 01, is affirmed. The claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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