

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MADISON HANKINS
Claimant

IA DEPT OF HUMAN SVCS/GLENWOOD
Employer

APPEAL 18A-UI-11686-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/04/18
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 21, 2018 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit her employment due to a non-work-related illness or injury. The parties were properly notified of the hearing. A telephonic hearing was held on December 18, 2018. The claimant, Madison Hankins, participated. The employer, Iowa Department of Human Services – Glenwood, participated through witness Natalie McEwen, Public Service Supervisor; and Trenton Kilpatrick of Corporate Cost Control represented the employer. Claimant's Exhibits A and B and Employer's Exhibits 1 through 6 were received and admitted into the record without objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a resident treatment worker, from March 19, 2018, until August 23, 2018, when she was discharged. Claimant last reported to work on June 13, 2018. She was absent on June 14 and 15, due to personal illness. On June 16, claimant's water broke and she was admitted into the hospital. Claimant's boyfriend contacted the employer to let them know that claimant would not be at work. On June 23, 2018, the employer sent claimant a letter approving her for eight weeks of unpaid, job-protected leave. (Exhibit 3) On August 4, 2018, the employer sent claimant a second letter reminding her that her leave was expiring on August 13, 2018. (Exhibit 5) This letter instructs claimant to contact her supervisor about returning to work. Claimant did not receive this letter, so she did not contact the employer as instructed. On August 17, McEwen contacted claimant to ask if she was returning to work. Claimant said she intended to return but did not have a doctor's note releasing her to return to work. McEwen told claimant to get the doctor's note and to let her know what else she needed. As of August 23, McEwen had not heard back from claimant and claimant had not returned to work with a doctor's note, so the employer discharged her for not completing her six-month probationary period successfully.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

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).

Iowa Admin. Code r. 871-24.32(5) provides:

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

Discharge within a probationary period, without more, is not disqualifying. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Mere incapacity or incompetence is not disqualifying. 871 IAC 24.32(1)(a); *Eaton v. Iowa Dept.*

of Job Service, 376 N.W.2d 915, 917 (Iowa App. 1985); *Newman v. IDJS*, 351 N.W.2d 806 (Iowa 1984); *Richers v. Iowa Department of Job Service*, 479 N.W.2d 308 (Iowa 1991); *Kelly v. Iowa Dept. of Job Service*, 386 N.W.2d 552 (Iowa App. 1986). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. In this case, the employer discharged claimant for failing to return back to work with a doctor's note as expected. Claimant was initially told to return back after her leave expired on August 13. This was extended by McEwen during a telephone conversation on August 17. Claimant was not given a deadline by which to return or by which to present a doctor's note. She was simply instructed to be in touch with the employer. The employer waited less than one week after this conversation before discharging her. Claimant had no notice that she was expected to be back at work with her doctor's note by this time, and she was not aware her job was in jeopardy. The employer has not established that claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The November 21, 2018 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn