IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

VALERIE J MOELLERSUN
Claimant

THE HERTZ CORPORATION
Employer

APPEAL NO. 18A-UI-11415-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/28/18
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The Hertz Corporation (employer) appealed a representative's November 16, 2018, decision (reference 01) that concluded Valerie Moellersun (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 December 10, 2018. The claimant participated personally. The employer participated by Linda Lund, Site Director, and Shantel Kendrick, Human Resources Business Partner. The employer offered and Exhibit 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 December 5, 2016, as a full-time customer sales representative. The claimant signed for receipt of the employer's handbook when she was hired. The employer issued the claimant written warnings for properly reported absences due to illness.

The handbook stated that immediate discharge can be initiated for "[l]eaving the facility and/or work station during a scheduled shift without management approval, excluding scheduled approved breaks." The claimant and her co-worker generally took one thirty-minute and two fifteen-minute breaks, if time allowed. The site director thought employees should be allowed one thirty-minute break during an eight hour shift. If management was not on site, employees could leave the work site without approval for breaks.

After the claimant's child was born, she explained to the site director that she had to run home and transport her daughter during her shift. The claimant worked until 6:00 or 7:00 p.m. The site director seemed to understand the claimant's situation. The claimant always combined her breaks and clocked out. She thought the site director knew she was leaving.

On October 25, 2018, after the site director left for the day, the claimant ran home to transport her daughter. She checked with her co-worker and the two agreed it was a good time for the

claimant to go. The claimant forgot to clock out before she left. On October 29, 2018, the employer noticed the situation. The claimant did not work on October 29 and 30, 2018. On October 31, 2018, the employer terminated the claimant for leaving the facility without approval or clocking out. The site director would have worked later on October 25, 2018, if she had known the claimant needed to leave to take care of her child.

The claimant filed for unemployment insurance benefits with an effective date of October 28, 2018. The employer participated personally at the fact finding interview on November 15, 2018, by Linda Lund.

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(4) provides:

> (4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in

> disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). 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 terminated the claimant for leaving the work-site, without approval, while on break. The claimant admits that she left the work-site on break. Employees do not need approval if the site director is not on premises. The parties do not agree upon how long the claimant was gone on October 25, 2018, or what the employer's rules state regarding breaks.

The employer is the party who has access to the documentation but it did not provide the information. Therefore, this administrative law judge will accept the claimant's testimony that she was away from work for one hour. She was an eye witness to her absence.

The employer testified that the claimant was allowed a thirty-minute break during her eight hour shift but it was unable to provide documentation for that assertion. If an employer expects an employee to conform to certain expectations, then written, detailed, rules should be provided. Misconduct cannot stand on mere allegations.

It appears the employer was not clear about its break policy and its communication of whether the claimant could leave work to transport her child. The claimant admitted that she forgot to clock out for one break. Her inadvertent failure to follow instructions once does not rise to the level of misconduct. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's November 16, 2018, decision (reference 01) is affirmed. 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/rvs