

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY K GRIMSLEY
Claimant

APPEAL NO. 16A-UI-04593-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARMOUR ECKRICH MEATS LLC
Employer

OC: 03/27/16
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated April 11, 2016 (reference 01) which denied unemployment insurance benefits, finding that the claimant was discharged for disqualifying conditions on March 24, 2016. After due notice was provided, a telephone hearing was held on May 3, 2016. The claimant participated. The employer participated by Ms. Jacque Huesman, Human Resource Manager.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Mary Grimsley was employed by Armour Eckrich Meats LLC from October 11, 1989 until March 24, 2016, when she was discharged from employment. Ms. Grimsley was employed as a full-time general laborer for the company and was paid by the hour.

Ms. Grimsley was discharged from her employment when she exceeded the permissible number of attendance infraction points allowed under the company's "no-fault" attendance policy. Under the terms of the policy, employees are subject to discharge if they accumulate seven infraction occurrences within a 12-month rolling period. Employees are assessed one occurrence point for each day of absence and a portion of a point for leaving early or arriving tardy. Ms. Grimsley had been warned by the company about her attendance when she had accumulated three points, four points, and six points. Of the seven points considered by the company under its attendance point policy, four absences were due to the claimant's personal illness or injuries and they were properly reported and one-half point was assessed when the claimant was required to be absent due to a death in her family. The claimant's infractions took place due to weather on February 3, 2016, February 8, 2016, and March 24, 2016.

On each occasion that the claimant was absent due to weather, Ms. Grimsley had attempted to the best of her ability to get to work but founds the roads impassable or was required to leave work early because road conditions were rapidly declining. In all instances, the claimant notified her employer that she was going to be absent or leave work early.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 and (7) 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).

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden of proof in this matter. See Iowa Code Section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee, may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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. of Appeals 1992).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. The evidence must first establish, however, that the most recent absences that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues such as oversleeping or failure to obtain childcare are considered unexcused. Absences related to illness or other justifiable reasons are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that the claimant did follow the employer's call-in policy and that the claimant's unexcused absences were not excessive. In the infractions considered by the employer in the decision to terminate Ms. Grimsley, the claimant had been absent or left work early due to illness on four occasions, she had received a one-half point for attending the funeral of family member, and on two or more occasions the claimant had attempted to the best of her ability to get to work but found that roads were impassable and not safe for travel. In all cases, the claimant notified the employer of her impending absences.

The propriety of the employer's decision to terminate Ms. Grimsley is not at question in this matter. The issue is whether the claimant's conduct was in such a nature so as to disqualify her from the receipt of unemployment insurance benefits. While the decision to terminate Ms. Grimsley may have been a sound decision from a business viewpoint, the evidence in the record does not establish intentional or willful misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. The claimant's absences were due to illness or other excusable reasons and were properly reported. In these circumstances, misconduct has not been established. Accordingly the claimant is eligible to receive unemployment insurance benefits, providing that she meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated April 11, 2016 (reference 01) is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits all allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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