

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL J DEGEEST
Claimant

APPEAL NO. 13A-UI-14323-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 12/01/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated December 18, 2013, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on January 23, 2014. Claimant participated. The employer participated by Ms. Alyce Smolsky, Hearing Representative and witness, Ms. Jaci Garden, Director of Nursing and Ms. Linda Lee, Administrator. Employer's Exhibits One, Two, Three, Four and Five were 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 all the evidence in the record, the administrative law judge finds: April DeGeest was employed by the captioned employer from December 5, 2012 until November 11, 2013 when she was discharged from employment. Ms. DeGeest was employed initially as a full-time certified nursing assistant. The claimant was re-classified as a casual/on-call worker effective October 15, 2013 because of previous attendance issues.

At the time that Ms. DeGeest accepted the casual/on-call work with this employer, Ms. DeGeest was given the opportunity to choose the dates in November 2013 that she would perform services as a certified nursing assistant for the employer. Ms. DeGeest specified November 7, 8, 10, 24 and 29 as the days that she would be available and wanted to be scheduled for work. In conforming to Ms. DeGeest's requests, she was scheduled to work those days.

On November 8, Ms. DeGeest called in indicating that she was too emotional to report for work that day. The claimant's need to be absent was verified by her physician later that day. There was no indication that the claimant would be unable to work her next scheduled working day, November 10, 2013. On November 10, 2013, Ms. DeGeest failed to report or to notify her employer that she would be absent. When later contacted by her supervisor, Ms. DeGeest had no explanation for her failure to report or provide notification that day.

Ms. DeGeest had previously received warnings from her employer that her attendance was unsatisfactory. The claimant had been issued a final warning for attendance on October 15, 2013, a written warning for attendance on June 27, 2013 and a written warning for unsatisfactory attendance on February 26, 2013. Employees who have two or more absences without providing notification are subject to discharge under company policy. Ms. DeGeest previously had failed to report and had not provided notification on June 23 and September 24, 2013. At the time of termination Ms. DeGeest had been placed on notice that her employment was in jeopardy due to excessive unexcused absenteeism and further attendance infractions would result in her termination from employment.

It is the claimant's position that she did not report for scheduled work on November 10, 2013 and did not notify the employer because she was unaware that she was expected to work that day, although she had chosen November 10, 2013 as one of the five days in November that she would perform services for Care Initiatives.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

871 IAC 24.32(7) provides:

(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 insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment insurance 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. App. 1992).

No aspect of the contract for employment is more basic than the right of the employer to expect that its employees will appear for work on the hour and day agreed upon. Recurrent failure to honor that obligation shows a substantial disregard for the employer's interests and thus may justify a finding of misconduct in connection with the employment.

In the case at hand the evidence in the record establishes that Ms. DeGeest had been repeatedly warned for excessive unexcused absenteeism and that the claimant was on a final attendance warning at the time of the final attendance infraction. The claimant was discharged when she failed to report for scheduled work on November 10, 2013 and did not notify the employer of her impending absence in violation of company policy. The claimant knew or should have known that she was expected to work that day because she had personally chosen that date as one of the five dates in November of 2013 that she would perform services as a CNA for this employer. The administrative law judge finds the claimant's explanation that she did not know that she was scheduled to work strains credibility. The claimant's failure to report or provide notification on November 10, 2013 was the third time that the claimant had failed to report or provide notification and the claimant was discharged per the company's established policies. The employer has sustained its burden of proof in showing that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated December 18, 2013, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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