

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PERSAPHONE T GRANT
Claimant

APPEAL NO. 13A-UI-07200-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEAVER ENTERPRISES LTD
Employer

OC: 05/19/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(4) – Disciplinary Suspension Considered Discharge Issue

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated June 13, 2013, reference 01, which denied unemployment insurance benefits finding that the claimant was placed on a disciplinary suspension on May 19, 2013 for violation of company rules. After due notice was provided, a telephone hearing was held on August 22, 2013. The claimant participated. The employer participated by Mr. C. J. Patel, District Manager.

ISSUE:

The issue in this matter is whether the claimant's suspension from work took place under disqualifying conditions.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: the claimant began employment with the captioned company, doing business as KFC, on February 18, 2010. Ms. Grant remains employed by the company at the time of hearing. The claimant holds the position of full-time shift leader and is paid by the hour. Her immediate supervisor is C.J. Patel. The claimant was placed upon a disciplinary suspension without pay for the period of May 16, 2013 through May 22, 2013 based upon the employer's belief that she had intentionally failed to report for scheduled work although she had been instructed to do so.

Ms. Grant had requested to have Sunday, May 12 off approximately six to eight weeks in advance. The claimant planned to be married that weekend and desired to have the time off in conjunction with her wedding plans. The claimant's request was approved and the claimant made plans to be off work from May 9 through May 15, 2013, specifically including May 12, 2013.

Although the claimant's time off work had been previously requested and approved by management, subsequently another management official, Terry Moffit, rescinded the claimant's authorization to be off on Sunday, May 12, 2013 because the facility needed more staffing that day which was Mother's Day. Ms. Grant was informed that she was expected to work.

Two hours before the beginning of the claimant's work shift on Sunday, May 12, Ms. Grant called in and stated that she was unable to come to work that day. Although Mr. Patel did not take the call, it was his belief that the claimant had not stated that she was ill at that time.

Upon returning to work Ms. Grant indicated that she had been ill on May 12 and unable to report for work for that reason. In support of her position the claimant provided a doctor's note dated May 15, 2013 excusing the claimant from being at work on May 12. Based upon the employer's belief that the claimant had chosen not to report to work that day, the claimant was suspended from work as a disciplinary suspension.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the disciplinary suspension was imposed due to misconduct in connection with the work. It does 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.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the 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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the 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).

In this case, the claimant properly called into report her impending absence on May 12, 2013 and the claimant maintains that she informed the employer at that time that she was unable to report to work because she was ill or not feeling well.

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.

Absence due to illness properly reported is considered excused under the provisions of the Employment Security Law. With regard to illness, a statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual and is legally sufficient to establish whether or not the claimant is ill unless disproved by other evidence. 871 IAC 24.22(1)(a). The administrative law judge thus concludes that the claimant has established that she was ill and unable to report for work on May 12, 2013. As the claimant's absence was properly reported, the absence is considered to be excused under the provisions of the Employment Security Law and the suspension imposed by the employer took place under non-disqualifying conditions. Unemployment insurance benefits for the period in question are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated June 13, 2013, reference 01, is reversed. The claimant was suspended under non-disqualifying condition. Unemployment insurance benefits are allowed, providing that she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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