

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

NICHOLAS S ANDERSON
Claimant

APPEAL NO: 19A-UI-07275-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GO DADDY SOFTWARE INC
Employer

OC: 07/28/19
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 3, 2019, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 7, 2019. The claimant participated in the hearing. Kris Meyer, Employee Relations Specialist and Joe Louison, Manager participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time consultant for Go Daddy Software from February 20, 2018 to August 1, 2019. He was discharged for attendance issues.

The employer does not use a point-based attendance policy. An employee must have accrued sick leave or vacation time to cover his absences or he will face disciplinary action. An employee must call the call out phone line and notify his supervisor before the end of his shift if he is going to be tardy, leave early or be absent due to illness. Vacation must be preplanned.

On May 20, 2018, the claimant received a written warning for an incident of tardiness without the accrued time to cover his absence. On June 11, 2018, he received a final written warning for an absence without the accrued time to cover it. On November 27, 2018, he received a final written warning for absences November 23, 25 and 26, 2018, without the accrued time to cover those absences. On July 3, 2019, the claimant was tardy and did not call the attendance line or his supervisor. On July 10, 2019, the claimant left early without reporting his absence by calling the attendance line or notifying his supervisor. On July 11, 2019, the employer talked to the claimant and reminded him he needed to call in every time he was absent. On July 17, 2019, the claimant was absent but did not properly report his absence to the attendance line or his supervisor. He testified he did email a supervisor on duty but the employer does not have any record of that email. On July 28, 2019, the claimant was absent 20 minutes due to illness and

on July 29, 2019, he was absent 30 minutes due to illness. He reported both those absences to the attendance line and his supervisor and had accrued time to cover those absences. The employer terminated the claimant's employment August 1, 2019, with the final event being his July 17, 2019, absence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant clearly did not familiarize himself with the employer's attendance policy and even after the employer reminded him he needed to report his absences to the attendance line and his supervisor July 11, 2019, he failed to do so July 17, 2019. That said, however, the employer waited just over two weeks before terminating the claimant's employment for that absence and consequently it was no longer a current act of misconduct. Therefore, benefits must be allowed.

DECISION:

The September 3, 2019, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn