

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELLIS M MILLER
Claimant

APPEAL NO. 13A-UI-08979-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COUNTRY HOUSE OF DAVENPORT LLC
Employer

OC: 07/07/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated July 30, 2013, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on September 10, 2013. Claimant participated. Although duly notified, the employer did not participate nor submit subpoenaed documents.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Ellis Miller was employed by the captioned employer from September 12, 2012 until July 4, 2013 when she was discharged from employment. Ms. Miller was employed as a full-time caregiver and was paid by the hour. Her immediate supervisor was Ms. Nicole Wills.

Ms. Miller was discharged by telephone after she was unable to report for scheduled work on July 3, 2013 due to a family emergency and because the claimant had called in to report that she was going to be late in reporting to work on July 4, 2013. Ms. Miller had notified the employer of her impending absence following company procedures on July 3 and the employer had verified that they had received a message from the claimant's sister stating that the claimant would not be able to report because of a family emergency. On July 4, the claimant had overslept because she was up late the night before due to the family emergency and notified her employer by telephone that she was in route to work. At that time the claimant was told that she had been discharged from employment.

Prior to the final two incidents the claimant had been absent from work on very few occasions and on the occasions that she had been absent the claimant had provided advance notice and medical documentation. It is the claimant's belief that she had correctly followed the call-in procedures and she had followed the procedures as instructed and in the same way that other employees had followed them.

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 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(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 benefits. Conduct serious enough to warrant discharge of an employee are not necessarily 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).

Allegations of misconduct 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. See 871 IAC 24.32(4).

The evidence in the record in this matter establishes that the claimant had very seldom had attendance violations prior to July 3 and July 4, 2013. On those dates the claimant had properly notified the employer of her impending absence or lateness but nevertheless was discharged by the employer.

The evidence in the record does not establish that the claimant's absenteeism had been excessive or that the claimant had failed to follow company procedures in reporting her last attendance infractions. The evidence in the record does not establish misconduct sufficient to warrant the denial of unemployment insurance benefits. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated July 30, 2013, reference 01, is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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