IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

MARY L CHRISTOPHERSON
Claimant

GRAPETREE MEDICAL STAFFING INC
Employer

APPEAL NO. 18A-UI-08442-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/15/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Grapetree Medical Staffing (employer) appealed a representative's August 3, 2018, decision (reference 01) that concluded Mary Christopherson (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 29, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Gidget Wingad, Human Resources Specialist. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 28, 2016, as a part-time on call certified nursing assistant. She signed for receipt of the employer's field staff guide on June 28, 2016. Her first day of work was August 5, 2016. The field staff guide did not indicate when employees should report absences or that a certain number of absences would result in termination. The claimant always properly reported her absences.

The claimant reported her absence because she had car problems on April 6, 2017, her mother was ill from a stroke August 21, and September 21, 2017. The claimant was absent due to medical issues on May 1, 30, September 11, November 14, 15, and 16, 2017.

On January 5, 2018, while home with an abscessed tooth, the employer sent her an email placing her on probation for six months with a minimum of twenty shifts to be worked because of her absences. The employer notified the claimant that "any attendance issues during this time, including self-cancellations or late arrivals, shall result in further disciplinary action, up to and including termination".

The claimant was absent due to medical issues on January 5, 6, and February 16, 2018. She provided medical documentation for her absences on January 5 and 6, 2018. Her grandson

was sent by life-flight and on life support on March 6, 7, 8, 9, 10, 2018. She was exhausted from her grandson's ordeal on March 12, 2018. Her grandson was also sent by life-flight and in the hospital on April 29 and May 2, 2018. There was bad weather on April 14, 2018, and her daughter was in the hospital on April 26, 2018. On May 1, 2018, the employer sent her an email placing her on amended probation for an additional six months with a minimum of twenty shifts to be worked. The employer notified the claimant that "Any attendance issues during this time, including self-cancellations, no call no shows or late arrivals, for any cause, will result in immediate termination". The May 1, 2018, email listed the claimant's recent absences including the future absence on May 2, 2018, when the claimant would be absent because her grandson would be in the hospital. On May 2, 2018, the employer sent the claimant an email saying "We encourage all HCP's to share medical documentation that helps validate any medical related absence as we do take this into consideration during an HR record review.

On July 16, 2018, the employer sent the claimant an email termination for failing to provide doctor's notes for her absences. The email stated, "Since your amended probation you have had the following incidents and not provided supportive document of any of these incidents". The termination listed absences on May 2, June 21, July 14, and 15, 2018. On June 21, 2018, the claimant's car would not start. On July 14, 2018, the claimant reported to the employer that she thought she had food poisoning. On July 15, 2018, the claimant called the employer at 5:11 a.m. and said she was going to the emergency room. The employer terminated her when she did not provide medical documentation by 4:29 p.m. of the day she went the emergency room.

The claimant filed for unemployment insurance benefits with an effective date of July 15, 2018. The employer participated personally at the fact finding interview on July 31, 2018, by Gidget Wingad.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a properly reported illness which occurred on July 14 and 15, 2018. The claimant's absence does not amount to job misconduct because it was properly reported. The employer did not give notice that it was requiring medical documentation until the termination. The employer terminated the claimant for not providing it with medical documentation on the day the claimant went to the emergency room. The employer was not sure whether the claimant had left the hospital. The employer's actions were clearly unreasonable. If the employer wanted an employee to provide doctor's excuses for every absence, they should state that in a clear and concise manner in a warning to the employee. This claimant never received such a warning. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's August 3, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs