

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AKOKO AYIVOR
Claimant

APPEAL NO: 18R-UI-00056-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

OC: 10/08/17
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's unemployment insurance dated October 30, 2017, reference 01 which denied unemployment insurance benefits finding that the claimant was discharged on September 1, 2017 for excessive unexcused absenteeism. A hearing was scheduled for November 29, 2017. Claimant failed to respond to the hearing notice and did not provide a telephone number in which she could be reached for the hearing. On November 30, 2017, an administrative law judge decision was entered affirming the October 30, 2017, reference 01 decision that denied benefits. The claimant filed an appeal with the Employment Appeal Board. The Appeal Board concluded that the claimant had contacted the administrative law judge and established her intention to follow through with the appeal process. The Employment Appeal Board remanded the matter back for another hearing before an administrative law judge. In compliance with the Employment Appeal Board's directive, after notices were sent to the party's' and a telephone hearing was held on January 26, 2018, at which time claimant participated personally. Participating on behalf of the employer was Ms. Malia Maples, Employer Representative and witness Ms. Lindsey Peterson.

ISSUE:

Whether the claimant was discharged for work connected misconduct of quit her job by failing to report for scheduled work and not notifying the employer for three or more consecutive work days.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Akoko Ayivor began employment with The Hon Company on July 11, 2016. The claimant was employed as a full-time work cell operator and was paid by the hour. Approximately July 5, 2017, the claimant sustained a work injury when she tripped and was off work for a short period of time due to her injury. Ms. Ayivor was fully released and returned to full-time employment after being authorized to do so by the examining doctor on her worker's compensation claim.

The employer's policy requires employees who are absent from work to call in to the company's hotline each day that they are absent, This is a requirement unless their absence has been pre-

approved. All employees are informed of the call in requirement in orientation and also in training the company also provides to workers about the requirement they call in to the hotline, and the telephone number. This information is also given in written form provided to each employee.

Approximately six weeks after returning to work, Ms. Ayivor stopped reporting for work and did not call the employer to inform them why she was absent. Ms. Ayivor did not provide any medical documentation to the employer stating any need to be absent for medical reasons. After the claimant had failed to report for scheduled work for three consecutive work days on August 29, 30, and 31, 2017, without notice, the employee was considered to have abandoned her job. Company policy provides that employees considered to have separated themselves from the job by failing to report for three consecutive days without notification to the employer. Although the employer had been told she had quit in statements that her husband had made to the company, the employer removed the claimant from employment because she was not coming to work and had not provided the employer any reason for three consecutive work days, in violation of policy.

The claimant has a number of reasons for her conduct. The claimant asserts that at one juncture, her supervisor had told her that "if she did not feel well, that she could go home". The claimant asserts that on different dates, she had been advised by a doctor not to work. The claimant has supplied no medical documentation in support of that position. Ms. Ayivor also asserted she had not called in because she had "lost the telephone number" that had been provided by the employer and she was not able to obtain the telephone number from her husband. It appears that the claimant's belief that because she had previously sustained a work injury, that the employer had an obligation to "take care of her medical needs", thereafter, and she was under no obligation to report or notify the employer while she was not appearing for scheduled work at any time after she had sustained her previous work injury.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged from her employment for work connected 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, 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. 871-24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

In the case at hand, there is a presumption that an employee who has been absent from work for three days without giving notice to the employer in violation of a company rule has voluntarily quit their employment without good cause attributable to the employer. In the case at hand, the claimant maintains she did not choose to quit although she had not reported to work for three or more consecutive work days and provided no notice to the employer and asserts she has been discharged by the employer for no good reason. The administrative law judge disagrees.

The claimant maintains that she did not intend to quit employment. The evidence establishes that the claimant's job separation was caused by the claimant's failure to adhere to the company's reasonable and known policy that employee's must notify the employer each day that they are absent, in order for the absence to be excused and to remain in the employment relationship with the employer. In this case, the question is whether Ms. Ayivor's failure to report and her failure to notify the employer why she was absent for three consecutive days was a willful disregard of the employer's interests and standards of behavior that the employer had a right to expect of its employees under the provisions of the Iowa Employment Security Law. It does.

Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment 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.

In the case at hand, the evidence establish that Ms. Ayivor had been provided the telephone number of the company's hotline and had been specifically informed of the requirement that she call in each day to report any impending absences and that her failure to do so for three or more consecutive work days would result in the claimant being separated from employment.

The claimant knew the call in rule. The claimant had a previous work injury but had been fully released to return to work and had returned to work for approximately six weeks before Ms. Ayivor suddenly stopped reporting for work. The claimant took no steps to inform the employer why she was not reporting or whether she wanted to continue to be employed by the company. The employer first followed a reasonable course of action by questioning her husband, who is also employed by the company. Her husband stated that it was the claimant's intention to quit.

The claimant has denied that it was her intention to quit. The question is whether the claimant's conduct was an intentional disregard of the employer's interests and standard of behavior sufficient to result in the claimant's discharge and the denial of unemployment insurance benefits. It was.

No contract for employment is more basic than employer's right to expect employees will appear for work on the day and hour agreed upon. Repetitive failure to report to work without providing a reason to the employer, in violation of an established policy shows a willful disregard of the employers interests and standards of behavior and constitutes work related misconduct. Accordingly, the claimant is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated October 30, 2017, reference 01 is affirmed. Claimant was discharged for misconduct in connection with her work. Unemployment insurance benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn