

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSA M BORBOA
Claimant

APPEAL NO: 170-UI-07205-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOFFREDO GARDENS INC
Employer

OC: 01/08/17
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Loffredo Garden, Inc., the employer, filed a timely appeal from a representative's decision dated February 1, 2017, reference 01, that found claimant eligible to receive unemployment insurance benefits. A telephone hearing was held on March 2, 2017. Claimant did not participate. The employer participated. On March 17, 2017, an administrative law judge's decision was issued finding that the claimant voluntarily quit employment. An appeal was filed with the Employment Appeal Board and the matter was remanded for another hearing to take additional evidence into the record. A hearing was scheduled and held on May 19, 2017. Claimant did not participate. The employer once again participated. On June 16, 2017, an administrative law judge decision issued modifying an earlier law judge decision, finding that the claimant quit employment to take vacation that had not been authorized by the employer. Benefits were denied and claimant was to repay \$1,417.00 in unemployment insurance benefits overpayment. Ms. Borboa once again filed an appeal with the Employment Appeal Board. The Employment Appeal Board on July 17, 2017 remanded the matter back to the Appeals Bureau for another hearing.

In compliance with the Employment Appeal Board's directive, a telephone hearing was scheduled and held on August 3, 2017. Claimant participated. After a late call, the employer participated by Ms. Maria Conheajo, Mr. Joe Chavez and Mr. Dean Riis.

ISSUE:

Whether the claimant was discharged for job related misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: Rosa Borboa was employed by Loffredo Gardens, Inc. from July 30, 2012 until December 16, 2016. She was separated from employment on or about December 21, 2016, after the employer concluded that the claimant had failed to report for scheduled work for three consecutive work days without notifying the employer. Ms. Borboa had been employed as a full-time production worker and was paid by the hour. Her immediate supervisor was Joe Chavez.

On December 1, 2016, the claimant was undergoing an eye examination, and at the claimant's request, the examining doctor provided the claimant with a note excusing the claimant from work "12/19/16 – 01/09/17". The intent of the doctor's note was to medically excuse Ms. Borboa from work for the time period December 19, 2016 through January 9, 2017. The claimant presented the doctor's note to her supervisor in early December, 2016. Mr. Chavez did not question the claimant about the length of time or the dates, because he believed the note was excusing the claimant from work for only the two separate dates on the doctor's note.

Ms. Borboa last worked on Friday, December 16, 2016 and did not again report back to work until Monday, January 9, 2017, at the end of the time her doctor had authorized her to be away from work. Because the employer believed that the dates were not inclusive, the employer expected Ms. Borboa to return to work or provide additional notification on the next working day, December 20, 2016. The claimant failed to report for work that day and for two consecutive days afterwards without any additional notification. The employer concluded the claimant had voluntarily quit employment by failing to report without notification for three consecutive work days in violation of company policy. Because the claimant was a good employee, the employer had made repeated attempts to contact Ms. Borboa and had been unable to reach her. Family members also provided no information. When the claimant attempted to return to work after the expiration of the doctor's excused time, she was not allowed to resume her employment and filed a claim for unemployment insurance benefits. Ms. Borboa later obtained and submitted a clarification from her eye doctor verifying that the physician's intent was to excuse the claimant from work not only for December 19, 2016 and January 9, 2017, but also for the days between those dates.

REASONING AND CONCLUSIONS OF LAW:

The claimant is not qualified to receive unemployment insurance benefits if the claimant is discharged for reasons that constitute work connected misconduct. The employer has the burden to prove the claimant was discharged for work connected misconduct as defined by the unemployment insurance law. See *Cosper v. Iowa Dep't of Job Serv.*, 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 benefits. The law limits disqualifying misconduct to willful wrongdoing or negligence that equals willful culpability.

With the benefit of the claimant's participation and testimony in this matter, the administrative law judge concludes that the claimant was discharged for no disqualifying reason. The claimant had obtained a doctor's statement verifying that she was authorized, for medical reasons, to be off work for the period of time from December 19, 2016 through January 9, 2017. The claimant had provided the doctor's statement which provided notice to the employer of the need for the claimant to be absent for a medical reason for the period of time in question. The doctor's note had been provided to the employer well in advance of the claimant's absence and the claimant had not been questioned about the note when the employer had sufficient time to do so. Ms. Borboa was not questioned about the matter and was not available to provide any information to the employer. Because the employer believed that the claimant was only authorized to be off for two separate days and not the inclusive days between the specified dates, the company considered the claimant's absences after December 19, 2016 to be absences without proper notice and the claimant was separated from employment after she accumulated three additional days when she had not reported for work and the employer believed that she had not provided notice.

Although the employer was reasonable in having questions about the length of time that the claimant had been authorized to be away from work by her doctor, a later document provided by the physician confirms the doctor's intention to excuse Ms. Borboa from work from the time period between the two dates listed on the doctor's note. The claimant did not know that there was any issue with the doctor's note or its meaning and believed that she was authorized to be away from work by the doctor's note she provided well in advance of her absences. The doctor's note was considered to be prima facie evidence of her health or ability to report for work.

The administrative law judge also notes, with the benefit of the claimant's attendance and credible testimony at the hearing, previous evidence from the employer that appeared to show that the claimant had intentionally acted to avoid being questioned about the matter was not asserted during this hearing.

The administrative law judge concludes, based upon the totality of the evidence in the hearings in this matter, that the claimant was discharged from employment for reasons that do not constitute job related misconduct. The claimant had provided advance notice to employer of her medical need to be off work for the time period in question. She subsequently submitted medical documentation verifying that it was her doctor's intention to authorize the claimant to be away from work for medical reasons for the dates between December 19, 2016 and January 9, 2017. The claimant was absent from work for medical reasons and had notified the employer in advance of her need to be absent for those reasons. Absences excused for the purposes of the Employment Security Law did not constitute disqualifying job related misconduct. Benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated February 1, 2017, (reference 01), finding that the claimant was discharged in a non-disqualifying condition is affirmed. Benefits are allowed provided claimant is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn