

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHERIE L MCGLYNN
Claimant

BROADLAWNS MEDICAL CENTER
Employer

APPEAL NO. 17A-UI-06082-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/21/17
Claimant: Appellant (2)

Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 7, 2017, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 28, 2017. Claimant participated and was represented by attorney Stuart Higgins. Employer participated by attorney Joseph Moser and witnesses Ashley Lansman, Shelly Farrell, Julie Kilgore. Employer's Exhibits 1-5 were admitted into evidence.

ISSUE:

Whether claimant quit for good cause attributable to employer?

Whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 2, 2017. Subsequent to that date claimant did not show up for work as she had a skin condition and had fallen, causing her injury. Claimant was in contact with her employer – if not everyday contact - to alert the employer that she was still ailing and was unable to return to work.

On May 18, 2017 employer sent claimant a letter stating that, "BMC has assumed you have voluntarily resigned your employment due to job abandonment. If there is any other information BMC needs to review please let us know. Otherwise, BMC will process your voluntary resignation effective May 25, 2017. "(Emp. Ex. 1).

Claimant came to BMC on Monday approximately a half hour before her shift was to begin. She was dressed in her work attire, and sat in the employees' break room until called into her supervisor's office. Claimant gave her supervisor doctor's notes from May 12, May 14, and May 16, 2017 excusing claimant's absences up until May 22, 2017. (Emp. Ex. 3-5). The notes also stated claimant was to work only half days when she returned. Claimant did not tell the supervisor verbally that she was ready to return to work, and the supervisor did not ask claimant

to return to her position. After a period of time, claimant gave her badge and her keys to employer and asked to say goodbye to her coworkers. Claimant's medical documents were forwarded to human resources.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code § 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.

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).

The administrative law judge first looks at whether claimant voluntarily quit her position or whether she was terminated by employer for misconduct by abandoning her position. The series of interactions between claimant and employer indicates that claimant was terminated by employer rather than having voluntarily quit her position. After claimant received a letter from employer dated May 18, 2017 (Emp. Ex. 1), claimant came to work prior to her shift, sat in the

employee lounge area dressed for work and with medical documentation to cover days she'd missed. These actions are certainly not those to be taken by a person desiring to quit her position. Employer received this information, but made no steps to start employee back with her job. Rather, employer gave no indication that claimant would be allowed to return to work, so claimant turned in her keys and employee badge.

Claimant never explicitly stated to employer that she wished to quit her position. Although employer states that claimant abandoned her job, employer's position is not supported by the facts. Employer has not shown claimant to have walked off her job, thereby abandoning her position, nor has it shown that claimant has voluntarily quit through three days of no/call – no/show for work. Employer's testimony indicated that claimant did maintain contact with her supervisor and did not have a three day period of no/call – no/show. Claimant did give up her badge and her keys, but this act in and of itself does not constitute intent to quit when claimant brought forth doctor's notes and was dressed and timely arrived for work on May 22, 2017. As the administrative law judge is unable to find a voluntary quit on the part of claimant, the matter will be looked at as a termination for misconduct.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra. In contrast, 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. 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. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The Iowa Supreme Court has opined that one unexcused absence is not misconduct even when it followed nine other excused absences and was in violation of a direct order. *Sallis v. EAB*, 437 N.W.2d 895 (Iowa 1989). *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984), held that the absences must be both excessive and unexcused. The Iowa Supreme Court has held that excessive is more than one. Three incidents of tardiness or absenteeism after a warning has been held misconduct. *Clark v. Iowa Department of Job Service*, 317 N.W.2d 517 (Iowa Ct. App. 1982). While three is a reasonable interpretation of excessive based on current case law and Webster's Dictionary, the interpretation is best derived from the facts presented.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning absenteeism. The last incident, which brought about the discharge, fails to constitute misconduct because claimant arrived to work with necessary documentation in a timely basis on May 22, 2017 but was not allowed to go back to work by employer. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated June 7, 2017, reference 01, is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn