

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**BRENDA S KLINGER**  
Claimant

**APPEAL NO. 18A-UI-06377-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALGREEN COMPANY**  
Employer

**OC: 05/20/18**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Brenda Klinger (claimant) appealed a representative's June 6, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Walgreen Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 27, 2018. The claimant participated personally. The employer participated by Scott Glab, Store Manager.

**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 July 18, 2014, as a full-time shift lead. The employer does not have a handbook. It has some policies and procedures on line. One policy was that disciplinary actions start after the employee is absent five times. The claimant was unaware of the policies. The employer reported her last day worked was May 18, 2018.

The claimant properly reported her absence due to a medical issue on January 21, 22, and 23, 2018. She had to leave work for two hours on April 2, 2018, and properly reported her absence due to a personal issue. She properly reported her absence due to a medical issue on April 16, 17, 18, 19, 20, 21, 29, 30, May 1, 2, 3, 4, and 5, 2018. The claimant provided the employer with doctor's notes excusing her absences due to medical issues. The employer wrote up a warning on the computer but did not give it to the claimant.

On May 21, 2018, the claimant was sick and vomiting. Her phone was not working so she had to go to the workplace to tell the store manager she could not perform her duties that day. The store manager told her that he appreciated her working on May 19, 2018, but he could have used her help on May 18, 2018 (sic). The claimant was not scheduled to work and had medical testing scheduled for May 18, 2018. The store manager complained that he had to work. The

claimant replied that it was his job to work when no one else could work. The store manager corrected her and said it was his job to find someone to work.

The claimant told the store manager she did not feel well and thought she was going to throw up. The store manager told her she had exceeded her absences and this was grounds for termination. The store manager asked her if this is what she wanted. The claimant said she did not feel well and had to leave. The store manager told the claimant to put her smock and other items down on the counter. The claimant left the store.

### **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 May 21, 2018. The claimant's absence does not amount to job misconduct because it was properly reported. 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.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because the employer's testimony was internally inconsistent.

**DECISION:**

The representative's June 6, 2018, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/rvs