

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L HALL
Claimant

APPEAL NO. 14A-UI-08557-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CBPR LLC
COUNCIL BLUFFS PIZZA RANCH
Employer

OC: 07/06/14
Claimant: Appellant (4-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated August 8, 2014, reference 01, which denied benefits finding the claimant left employment voluntarily on June 27, 2014 under disqualifying conditions. After due notice was provided, a telephone hearing was held on September 25, 2014. Claimant participated. The employer participated by Mr. Eddie Carrera, General Manager, and Ms. Amanda Lewis, Assistant General Manager. Claimant's Exhibits 1 and 2 were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jennifer Hall was employed by Council Bluffs Pizza Ranch beginning on February 2, 2014. Ms. Hall was employed as a part-time crew member and was paid by the hour. Her immediate supervisor was Amanda Lewis, the assistant general manager. Claimant's last day of work was June 27, 2014.

On June 27, 2014, after leaving her work shift, Ms. Hall went to the Emergency Room because of issues with her neck. The claimant was advised that she had pulled her neck muscles and was prescribed a narcotic pain killer. The claimant called the company's general manager to report that she could not go to work on Saturday, June 28, 2014 because of her medical condition and the medications that had been prescribed. When the employer indicated that Ms. Hall's services were needed that day, she agreed to report for her 1:00 p.m. shift. The claimant did not report at 1:00 p.m. because she had fallen asleep after previously taking the narcotic prescription pain killers. Ms. Hall notified her employer earlier that day of the reason for her absence. Claimant was advised to bring her doctor's note to the employer and did so.

On Monday, June 30, 2014, Ms. Hall called in to see if she was scheduled to work that day and was told that she was scheduled for 5:00 p.m. that day. Ms. Hall agreed to report but also told her employer that she had a doctor's appointment at 2:00 p.m. that afternoon. When the claimant visited her doctor that day she was prescribed different medications and taken off work for a 10-day period by doctor's orders. Ms. Hall provided the doctor's note to her employer by having it delivered to the employer by a personal friend. Although the claimant had been authorized to stay off work for 10 days by doctor's orders, the claimant nevertheless contacted the employer approximately three days later on July 3, 2014 to ask that her employer allow her to return to work earlier. The employer agreed to give Ms. Hall one day's work per week informing the claimant that she would be expected to report next for work on July 8, 2014 at 9:00 a.m. Ms. Hall agreed to report on that day.

On July 7, the claimant returned to her doctor and based upon the claimant's statements to her physician, her doctor told the claimant to remain off work until she had undergone an MRI and the results had been evaluated. On July 8, Ms. Hall notified the employer prior to the beginning of her work shift she could not report based upon the most recent doctor's orders. Later that day the claimant received a message from the company's general manager inquiring as to why she had not reported for scheduled work and Ms. Hall responded with a long text message explaining the reasons. On July 11, 2014, a spine specialist examined the claimant's neck and determined that surgery was necessary. Once again, Ms. Hall sent a text message to the employer indicating her need to be off work for an extended period of time but received no response from the employer. On July 14, 2014, the claimant called the employer's facility requesting to speak to Mr. Carrera, the general manager. Claimant was informed by the manager that she had been terminated because of her failure to report for work on July 8, 2014 as agreed.

It is the employer's position that because Mr. Carrera, the general manager, was absent on some occasions performing other duties, he was not aware of all the doctor's statements and/or communications with the company made by Ms. Hall during this period. It is the employer's further position that the company relied upon Ms. Hall's statements that she would report for work on July 8, 2014 but the claimant did not report.

REASONING AND CONCLUSIONS OF LAW:

The evidence in the record establishes the claimant did not quit her employment with this employer but was discharged from employment. The question is then whether the claimant's discharge was for misconduct sufficient to warrant the denial of unemployment insurance benefits. It was not.

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).

In discharge cases the employer has the burden of proof to establish that the claimant was discharged under disqualifying circumstances. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the claimant was initially seen by her physician on June 27, 2014 for a neck problem and it was initially determined that the claimant should stay off work and take medications. Although under a doctor's care, the claimant agreed to report to work the following day but did not do so because she had taken the prescribed medications and had fallen asleep and missed her shift. The claimant called in to report the reasons that she had been absent and was not discharged at that time. The claimant was further advised by her physician that she would be off work for a 10-day period because her neck condition was more serious than initially believed. The doctor's statement excusing the claimant from work for the following ten days was provided to the employer. Ms. Hall complicated the matter at that time by calling in and asking to return to work sooner than the doctor's statement allowed. It was agreed that she would report for work on July 8, 2014. Once again, the claimant did not report because she had again gone to a doctor who had again advised her not to work because of her medical condition. Claimant notified the shift manager on duty on the morning of July 8 of her inability to report for work and the reason for it. Further communication between the claimant and her employer after that date became even more convoluted because the claimant chose to use text messaging and/or leaving messages instead of speaking directly with the general manager. This was caused in part by the claimant's difficulty in directly reaching Mr. Carrera who is often busy performing other duties. After a series of communications and miscommunications, the claimant was finally informed at a later date that she had been discharged effective July 8, 2014 because she had agreed to report for work and had not done so.

Although it is understandable that the employer may have been confused at times by the claimant's method of communication, the length of her communications and what appeared at times to be contradicting statements, the administrative law judge nevertheless concludes that the claimant's final absence from work was for medical reasons and that the employer was properly notified of the claimant's impending absence.

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The question before the administrative law judge in this case is not whether the employer had a right to discharge Ms. Hall for these reasons but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that because the claimant's last absence was due to illness and was properly reported, she was discharged from employment for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

The administrative law judge notes the claimant's original claim date is July 6, 2014 and that the evidence in the record shows that the claimant was under a doctor's care during this time and was to undergo additional medical procedures. The issue of whether the claimant was able and available for work is, therefore, remanded to the Claims Division for investigation and determination.

DECISION:

The representative's decision dated August 8, 2014, reference 01, is modified in favor of claimant. The claimant did not voluntarily quit employment but was discharged on July 8, 2014 under non disqualifying conditions. Claimant is eligible to receive unemployment insurance benefits providing that she meets all other eligibility requirements of Iowa law. The issue of the claimant's ability and availability for work is remanded to the Claims Division for investigation and determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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