

The claimant was employed as a production machine operator full time beginning December 12, 1988 through September 12, 2005 when she was discharged. The claimant was granted a leave of absence from August 8, 2005 through September 9, 2005. The claimant was to return to work on September 9, as her leave of absence had expired. On September 12, the claimant did not report to work but did call in to tell her supervisor that she was going to be late but would get back with him later that day. This message was left at 6:53 a.m. At this time the claimant was not off on FMLA as she had already used up her FMLA. The claimant applied for leave specifically asking for the time off from August 8, through September 9, 2005. The claimant did not return to work on September 9, because she thought she was to return to work on September 10. The collective bargaining agreement provides that if an employee fails to report back to work on the first day after a leave of absence, that employee shall be discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant asked for and was granted a leave of absence. In the paper work the claimant filled out she indicated that she planned to return to work on September 9, 2005. The claimant was granted a leave of absence and was specifically put on notice that she had to return to work on September 9, 2005. The claimant indicated she thought she was to return to work on September 10, yet she did not show up for work or call in to report her absence from work on that day either. On September 12, the next working day, the claimant did not show up for work she just called in to indicate she would be late. The claimant was notified later that day that due to her failure to show up for work when her leave expired, she was terminated pursuant to the terms of the union contract. It is not believable that the claimant thought she was to return to work on the 10th, as she did not show up on the 10th for work. The claimant did not show up on the next scheduled working day, the 12th. The claimant was on notice through the union contract that if she failed to return to work after her leave expired, she would be discharged. The claimant had notice and her claim of mistaken dates is not credible in light of her failure to report for work on September 10. The claimant's failure to report for work is sufficient misconduct to disqualify her from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The September 29, 2005, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

tkh/tjc