

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMY M PACE
Claimant

CASEYS MARKETING COMPANY
Employer

APPEAL 21R-UI-19386-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/24/21
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Amy M. Pace, filed an appeal from the March 23, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the determination that the employer, Casey's Marketing Company, discharged claimant for excessive, unexcused absenteeism after being warned. The parties were properly notified of the hearing. The parties were properly notified of the hearing. A telephone hearing was scheduled for June 16, 2021. Claimant participated personally. The employer did not participate. A decision was issued on June 30, 2021.

Claimant appealed to the Employment Appeal Board (EAB). On September 2, 2021, the EAB reversed and remanded this matter to the Appeals Bureau for a hearing on the merits. Upon remand, due notice was issued and a hearing was held on October 22, 2021. Claimant participated personally. Employer participated through Penni Hewlett. Employer's Exhibits 1 through 4 were admitted.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a team member from January 28, 2016, until this employment ended on January 25, 2021, when she was discharged.

When schedules posted, two or three weeks in advance, claimant was in the habit of taking a picture of the schedule and making a copy of it. In the past, when the schedule changed after being posted, one of claimant's supervisors, Kyle Bader or Angela, would let her know about the schedule change. In January 2021, no one told the claimant that the schedule had changed. On January 25, 2021, a coworker, Tonya, texted claimant to ask if she was coming to work. Claimant's schedule showed she was off that day. When claimant followed up with Bader, he informed her that she had been discharged.

On January 14, 2021, claimant had received a written warning for attendance. Though the warning itself does not reflect that claimant properly reported her absence that day, claimant did call in advance of her shift to say she was ill. Claimant had also received a written warning on December 26, 2020, after she became confused about which days she was scheduled to work. She explained that she worked overnight the night of December 25, 2020, and got out of work early in the morning on December 26, 2020. She became confused when she was scheduled for a shift the same day, late in the day, believing herself to be scheduled the following day. She knew of others who had made the same mistake, but had not been written up for their mistake.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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 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 issue is not whether the employer

made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Here, claimant's final attendance-related incident was the result of a schedule change about which she did not know. She credibly testified that she had, in the past, received notice when a schedule change occurred, and did not this time. She had no reason to check the schedule because she had no indication it had changed since she looked at it when it was issued. The incident leading to her discharge was not volitional, because it was the result of a miscommunication that cannot reasonably be attributed to claimant. The employer did not provide evidence rebutting claimant's credible testimony regarding the circumstances surrounding her final absence. Accordingly, no disqualification is imposed, and benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The March 23, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

November 2, 2021
Decision Dated and Mailed

ar/kmj