

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LASHAUNDA D NELSON
Claimant

APPEAL NO: 19A-UI-01668-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAS L CARDELLA & ASSOCIATES INC
Employer

OC: 01/27/19
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 14, 2019, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 12, 2019. The claimant participated in the hearing. Myka Gilchrest, Senior Human Resources Manager; Jacob Rodriguez, Supervisor; Keisha Manternach, Administrative Assistant; and Barbara Toney, Employer Representative; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time customer care agent for Thomas L Cardella & Associates from April 2, 2018 to January 21, 2019. She was discharged for attendance issues.

On January 4, 2019, the claimant's son attempted suicide and the claimant told her supervisor, Jacob Rodriguez, about the situation. The claimant met with the employer and decided to change her status to part-time. On January 8, 2019, Mr. Rodriguez suggested to the claimant that she consider taking a leave of absence and told her to pick up the leave of absence paperwork. The claimant did so, completed her portion of the paperwork and had her son's medical providers complete their section, and returned the forms January 15, 2019. The employer scanned the paperwork and gave the originals back to the claimant. She notified Mr. Rodriguez she did so when he asked her if she turned it in. On January 18, 2019, the claimant talked to a supervisor by the name of Nick and told him she would be back February 1, 2019. She did not hear anything else from the employer until she went in to the office January 27, 2019, and was informed by Administrative Assistant Keisha Manternach her employment was terminated. The employer denies that it received the paperwork and listed the claimant as a no-call/no-show January 16, 17 and 18, 2019.

REASONING AND CONCLUSIONS OF LAW:

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

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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant reasonably believed she was on a leave of absence from January 8 through February 1, 2019. She completed and returned the leave of absence paperwork to Ms. Manternach and denies receiving any calls from the employer during that period of time.

The claimant had no intention of quitting her job and was not a no-call/no-show January 16 through January 18, 2019, as she truly believed she was on an approved leave of absence.

Under these circumstances, the administrative law judge must conclude the claimant did not voluntarily quit her job and did not commit any intentional, disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The February 14, 2019, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn