**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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| **LISA ALEXA**<br>Claimant<br><br>**MANNING REGIONAL HEALTHCARE CTR**<br>Employer | **APPEAL 20A-UI-08418-J1-T**<br><br>**ADMINISTRATIVE LAW JUDGE DECISION**<br><br>**OC: 05/31/20**<br>**Claimant: APPELLANT (2)** |

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

**STATEMENT OF THE CASE:**

On July 6, 2020, the claimant filed an appeal from the July 1, 2020, (reference 01) unemployment insurance decision that denied benefits based on excessive absences. The parties were properly notified about the hearing. A telephone hearing was held on August 28, 2020. Claimant participated. Employer participated through Shellie Lorenzen, Chief Human Resources Officer.

**ISSUE:**

Did claimant commit work related misconduct ?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on January 20, 2020. Claimant last worked as a full-time housekeeper. Claimant's last day at work was February 19, 2020. Claimant was separated from employment on February 24, 2020. On February 24, 2020 claimant's supervisor and a coworker were concerned about claimant's health. Claimant had been drinking to excess. The two coworkers drove claimant to a detox center. Claimant was admitted to the detox center. The employer knew claimant was in the detox center. Claimant completed the program and was released from the program on March 31. 2020. On March 3, 2020 claimant called her employer to check on her insurance status. Claimant was told that she was considered terminated as of February 24, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left his employment. *Irving v. Emp't Appeal Bd*., 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal*

*Bd*., 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd*., 492 N.W.2d 438, 440 (Iowa Ct. App. 1992).

In this case the employer has not shown that claimant voluntarily left employment. Claimant was terminated on February 24, 2020 when she went into the detox program. Claimant left for a medical reason and intended to return to work upon recovery. The employer knew the claimant was receiving medical treatment and assumed that claimant would not be coming back to work and then terminated her employment.

The next issue to determine is whether claimant committed 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).
The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv*., 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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 justifying termination of an employee and misconduct

warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).
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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Id. Negligence is not misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv*., 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd*., 423 N.W.2d 211 (Iowa Ct. App. 1988).

In order for a claimant's absences to constitute misconduct that would disqualify her from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See Iowa Administrative Code rule 871-24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See Iowa Administrative Code rule 871-24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Employers may not graft on additional requirements to what is an excused absence under the law. See *Gaborit v. Employment Appeal Board*, 743 N.W.2d 554 (Iowa Ct. App. 2007). For example, an employee's failure to provide a doctor's note in connection with an absence that was due to illness properly reported to the employer will not alter the fact that such an illness would be an excused absence under the law. *Gaborit*, 743 N.W.2d at 557. Claimant had not received any formal written warnings for attendance. The evidence in the record establishes a discharge for no disqualifying reason.

**DECISION:**

**Regular Unemployment Insurance Benefits Under State Law**

The July 1, 2020, (reference 01) unemployment insurance decision is reversed. Benefits are awarded, provided she is otherwise eligible.

James F. Elliott
Administrative Law Judge

August 31, 2020
Decision Dated and Mailed

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