

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAMEIKA SILER
Claimant

BEMIS COMPANY INC
Employer

APPEAL 20A-UI-09843-HP-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/07/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Claimant Shameika Siler filed an appeal from an August 14, 2020 (reference 01) unemployment insurance decision that denied benefits based upon her discharge from employment by Bemis Company Inc. (“Bemis”). Notices of hearing were mailed to the parties’ last known addresses of record for a telephone hearing scheduled for October 2, 2020. Siler appeared and testified. Kali Reynolds appeared and testified on behalf of Bemis. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

On December 16, 2018, Siler commenced full-time employment as a bag machine operator with Bemis. Siler had previously been an employee of a temporary employment agency that placed her at Bemis. Siler’s immediate supervisor was Greg Stoermer.

Bemis has an attendance policy that if an employee has eleven absences within a twelve-month period the employee may be discharged. Siler testified she was aware of the policy. Siler was absent on September 27, 2019, December 30, 2019, March 2, 2020, March 19, 2020, April 28, 2020, May 19, 2020, May 27, 2020, May 28, 2020, June 1, 2020, and June 2, 2020.

Siler testified she was off work four consecutive working days, on May 27, 2020, May 28, 2020, June 1, 2020, and June 2, 2020, because her childcare provider did not offer her childcare due to Covid-19 and she could not find another provider to provide childcare for these dates. Siler called into Stoermer to report her absences.

On June 5, 2020, Siler went to work and Bemis sent her home pending an investigation into the reasons for her absences. Jessica Peters conducted the investigation. Peters did not testify at hearing. Reynolds testified Siler told Peters she was absent because she had injured her ankle.

Siler denied injuring her ankle and reported she told Peters she was absent due to a lack of childcare.

Reynolds testified Bemis had a policy that if an employee had a daycare issue related to Covid-19, the absences would be excused. Siler reported a coworker told her about the policy, but she had not seen a copy of it when she was working.

The issue of Siler's absence that lead to her termination raises an issue of credibility. I found Siler's testimony reasonable and consistent at hearing. Peters was not present at the hearing to testify. I believe Siler reported she was absent due to a lack of childcare.

On June 9, 2020, Peters terminated Siler's employment for violating the attendance policy. Siler testified she was not aware her job was in jeopardy before she went to work on June 5, 2020. Reynolds agreed no one from Bemis notified Siler her job was in jeopardy before June 5, 2020, when she was escorted out of work.

REASONING AND CONCLUSIONS OF LAW:

Under Iowa Code section 96.5(2)a,

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.

871 Iowa Administrative Code 24.31(1)a, defines the term "misconduct" 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 Iowa Legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 558 (Iowa 1979).

871 Iowa Administrative Code 24.32(4) also provides,

Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of

misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

And 871 Iowa Administrative Code 24.32(8) provides:

Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Unemployment statutes should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 10 (Iowa 1982). The employer bears the burden of proving the employee engaged in disqualifying misconduct. *Id.* at 11. The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (Iowa Ct. App. 1984)

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits; such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806, 808 (Iowa Ct. App. 1984) The definition of misconduct in the administrative rule focuses on deliberate, intentional, or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* at 808-09. Negligence does not constitute misconduct unless it is recurrent in nature; a single act is not disqualifying unless it is indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986) Additionally, poor work performance is not misconduct in the absence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211, 213 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 666-69 (Iowa 2000) What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988) Instances of poor judgment are not misconduct. *Richers v. Iowa Dep't of Job Serv.*, 479 N.W.2d 308, 312 (Iowa 1991); *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 555 (Iowa Ct. App. 1986)

871 Iowa Administrative Code 24.32(7), provides, "[e]xcessive 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 Supreme Court has held 871 Iowa Administrative Code 24.32(7) accurately states the law. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984)

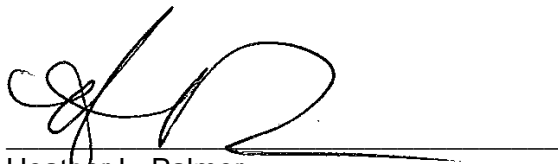
Excessive absences are not considered misconduct unless unexcused. *Cosper*, 321 N.W.2d at 10. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to and including discharge for the absence under its attendance policy. *Gaborit v. Emp't Appeal Bd.*, 743 N.W.2d 554, 558 (Iowa Ct. App. 2007)

The determination of whether unexcused absenteeism is excessive requires consideration of past acts and warnings. *Higgins*, 350 N.W.2d at 192. The absences must also be unexcused. *Cosper*, 321 N.W.2d at 10. An absence can be unexcused if it did not constitute reasonable grounds or if it was not properly reported. *Id.*; *Higgins*, 350 N.W.2d at 191. Excused absences are those with “appropriate notice.” *Cosper*, 321 N.W.2d at 10. Absences in good faith, for good cause, and with appropriate notice are not misconduct. *Id.* Such absences may be grounds for discharge, but not for disqualification of benefits because substantial disregard for the employer’s interest has not be shown and this is essential for a finding of misconduct. *Id.*

Siler was absent for eleven days within the rolling calendar year on June 2, 2020. She missed four consecutive working days on May 27, 2020, May 28, 2020, June 1, 2020, and June 2, 2020, due to a lack of childcare due to Covid-19. No one from Bemis warned Siler her job was in jeopardy before she was walked out on June 5, 2020, when she returned to work. Bemis’s own policy would have excused her last four absences because they were due to a lack of childcare caused by Covid-19. I find Bemis has failed to prove Siler was discharged for any current act of job-related misconduct that would disqualify her from receiving unemployment benefits. Benefits are allowed.

DECISION:

The August 14, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed. The employer has not established the claimant was discharged for misconduct for a disqualifying reason. Benefits are allowed provided the claimant is otherwise eligible.



Heather L. Palmer
Administrative Law Judge
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October 5, 2020
Decision Dated and Mailed

hlp/scn