

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARCELA ARROYO**  
Claimant

**ASPARATIONS SALON AND DAY SPA LLC**  
Employer

**APPEAL 20A-UI-06563-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Respondent (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit  
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview  
Iowa Code § 96.3-7 – Overpayment  
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

Asparations Salon and Day Spa (employer) appealed a representative's June 8, 2020, decision (reference 01) that concluded Marcela Arroyo (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 24, 2020. The claimant participated personally. The employer participated by Tasha Schnathorst, Owner. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issues include whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid benefits, which party should be charged for those benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 4, 2017, as a part-time receptionist. She signed for receipt of the employer's handbook on April 4, 2017. The attendance policy stated that employees should notify the employer of an absence two hours in advance if possible. There was no point system or other system for employees to know when termination was imminent. The employer issued the claimant a written warning in 2017, regarding improper time reporting. The employer notified the claimant that further improper time reporting could result in termination from employment.

The claimant was laid off after her shift on March 20, 2020, when the employer's shop was closed by proclamation of Governor Reynolds due to Covid-19. On March 13, 2020, at noon, the owner notified everyone, including employees, that the business was opening by making a

video. The video notified employees of their hours on May 14 and 15, 2020. The owner knew the claimant was experiencing anxiety about returning to work.

The claimant's hours on May 14, 2020, were not mandatory. She notified the owner she was not feeling well and would not be at work. The owner did not respond to the claimant. On May 15, 2020, the claimant was sick with a migraine through the night. She woke up at 6:35 a.m. and sent a message to the owner that she was sick with a migraine and could not work for her 8:00 a.m. shift. The claimant did not call at 6:00 a.m. because she was not awake at 6:00 a.m.

The claimant and the owner missed each other's calls and finally spoke as the owner drove to work. The owner told the claimant that she expected her at work. The claimant said she did not feel well and was not capable of working. The claimant found a co-worker who said she would work part of the day for the claimant. The employer told the claimant to take the day off.

On the next day the claimant was scheduled, Monday, May 18, 2020, the owner terminated the claimant when she arrived at work. The owner terminated the claimant for not working on Friday, May 15, 2020, while she was sick. The owner needed help because the business was busy and the owner suspected the claimant was not sick.

The claimant filed for unemployment insurance benefits with an effective date of July 18, 2020. She filed an additional claim for benefits on May 17, 2020. The claimant received a total of \$2,240.00 in state unemployment insurance and \$7,800.00 in Federal Pandemic Unemployment Compensation after July 18, 2020. The employer participated personally at the fact finding interview on June 5, 2020, by Tasha Schnathorst.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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(7) provides:

(7) Excessive unexcused absenteeism. Excessive 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.

Iowa Admin. Code r.871-24.32(8) provides:

(8) 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.

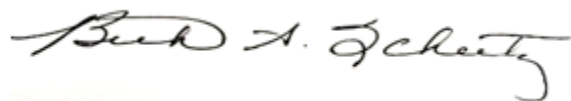
The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a properly reported illness which occurred on May 15, 2020.

The claimant's absence does not amount to job misconduct because it was properly reported to the best of the claimant's ability. A worker cannot report illness before they are sick or before they are aware that the sickness prohibits them from working. It is only after they are aware that it becomes necessary to report the absence. If the illness or awareness does not occur until after the reporting period, this should not negatively impact the worker.

The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

**DECISION:**

The representative's June 8, 2020, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



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Beth A. Scheetz  
Administrative Law Judge

July 31, 2020  
Decision Dated and Mailed

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