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

MARGARET HARRIS
Claimant

SECURITAS SECURITY SERVICES USA
Employer

APPEAL NO. 18A-UI-06181-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/31/17
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Securitas Security Services USA (employer) appealed a representative's May 24, 2018, decision (reference 04) that concluded Margaret Harris (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 scheduled for June 20, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer was represented by Barbara Toney, Hearings Representative, and participated by Christine Schellhorn, Human Resources Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 September 5, 2017, as a part-time security officer. The claimant signed for receipt of the employer's handbook on August 18, 2016, during a previous employment period. On March 22, 2018, the employer issued the claimant a verbal warning for tardiness. The employer notified the claimant that further infractions could result in a written warning.

On May 3, 2018, the claimant was working at the client company I.D.T., walking the perimeter. She attempted to enter the building but her badge would not open the door. A person in the building let her inside and she contacted her manager. Her manager took her badge, left her, and never returned. She was unable to continue patrolling the perimeter. She sat down and waited for the manager until her shift ended. The claimant telephoned the employer's scheduler. The scheduler told the claimant there was no work for her at I.D.T. or any other location. She said that perhaps there would be work in the fall. Employees at the I.D.T. location told the human resources manager that the claimant walked off the job and quit.

The claimant filed for unemployment insurance benefits with an effective date of December 31, 2017. The employer provided the name and number of Christine Schellhorn as the person who would participate in the fact-finding interview on February 2, 2018. The fact finder called Ms. Schellhorn but she was not available because she was at a meeting. The employer provided some documents for the fact finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant 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(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 Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct to end the claimant's work. The employer's scheduler ended the claimant's

work at I.D.T. and all other locations without explanation. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The claimant's fact-finding statement and the employer's testimony were inconsistent. The administrative law judge finds the claimant's statement to be more credible because she was an eye witness to the events for which she was terminated. The employer's testimony was internally inconsistent. The employer chose not to provide any eye witness testimony.

DECISION:

The representative's May 24, 2018, decision (reference 04) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

_____
Decision Dated and Mailed

bas/rvs