

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MICHELLE J HINDE
Claimant

APPEAL NO. 18A-UI-00279-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRYSTAL DISTRIBUTION SERVICES INC
Employer

OC: 12/10/17
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Crystal Distribution Services (employer) appealed a representative's December 29, 2017, decision (reference 01) that concluded Michelle Hinde (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 January 29, 2018. The claimant participated personally. The employer participated by Denny Bass, Vice President of Operations. 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 August 4, 2017, as a full-time warehouse worker. The employer has a handbook but it is unknown whether the claimant signed for receipt of it. The employer has a progressive disciplinary policy for attendance. An employee would receive a verbal warning, a written warning, a second warning, and a final warning for an improperly reported absence before being terminated. The employer would issue a warning for one absence without report. The employer did not issue the claimant any warnings during her employment.

On December 8, 2017, the claimant was supposed to work until 3:30 p.m. She was having problems with a co-worker and upset. The co-worker borrowed her forklift and did not return. He was supposed to help the claimant perform her work. The claimant finished her work without her forklift and without help from the co-worker. The claimant worked late the day before and her work was completed at 11:45 a.m. on December 8, 2017. She went to the office administrator, the person who is second in command, and said her orders were done for the day. The claimant told the office administrator to tell the manager she was going home.

The claimant filed for unemployment insurance benefits with an effective date of December 10, 2017. The employer participated personally at the fact finding interview on December 28, 2017, by Jeff Jackson. It did not identify the specific rule or policy that the claimant violated which caused the separation or provide any previous warnings for similar offenses.

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(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. This was a single incident of improperly reporting an absence. The claimant improperly reported the absence by telling the second person in charge, rather than the first person in charge.

If an employee did not report for work at all at the start of her shift, the employer's handbook states, she would receive a warning. In this case, the punishment does not fit the crime. The claimant actually reported her absence and worked a partial day. For this, she was terminated. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's December 29, 2017, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs