

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SARAH HARRIS

Claimant

KRAFT HEINZ FOODS COMPANY

Employer

APPEAL NO. 17A-UI-07488-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/18/17

Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 20, 2017, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 9, 2017. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: As employer did not testify in the hearing, all findings of fact are derived from claimant's testimony. Claimant last worked for employer on June 19, 2017. Employer discharged claimant on June 23, 2017 because claimant had failed to consistently contact employer and the insurance provider of the days she was missing work on her intermittent FMLA.

Claimant has suffered from anxiety and has been on intermittent FMLA for a number of years while working for employer. In 2017, employer changed procedures for those on FMLA. Claimant and other similarly situated were to both contact employer and to contact the insurance carrier on those days when employees were not showing up for work. Claimant stated that she knew the rules and did follow the rules by contacting both employer and their insurance company at times.

On June 19, 2017, employer called claimant into the human resources office to discuss her FMLA usage. When claimant was asked if she'd contacted the insurance carrier on each of the occasions when she used her intermittent FMLA, claimant stated that she had done so. Employer seemingly had reason to believe that claimant hadn't actually been in contact with the insurance company as often as she'd stated that she had. Claimant was put on suspension on that date. Further investigation turned up information indicating that during the months of January through June of 2017, claimant did not contact the insurance company of her FMLA

absences on 28 occasions. Employer terminated claimant stating that she was being terminated for dishonesty. At a separate time, claimant was told that she was being terminated for not properly reporting her absences.

REASONING AND CONCLUSIONS OF LAW:

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The

conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*. The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the testimony established that claimant was discharged for an act of misconduct when claimant was dishonest to employer regarding whether she had properly contacted employer's insurance company each time the intermittent FMLA was used.

The last incident, which brought about the discharge, constitutes misconduct because claimant stated that she knew about the company's policy, and certainly knew that she hadn't been in contact with the insurance company on all dates missed, but she chose to be dishonest to employer when questioned. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated July 20, 2017, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn