

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA L LEWIS

Claimant

APPEAL NO. 14A-UI-10971-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KASTIM CORPORATION

Employer

OC: 09/28/14

Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated October 21, 2014 (reference 01) which denied unemployment insurance benefits, finding that the claimant voluntarily left work without good cause. After due notice was provided, a telephone hearing was held on November 12, 2014. Claimant participated. The employer participated by Ms. Elizabeth Hansen, Store Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Amanda Lewis began employment Kastim Corporation d/b/a McDonald's in March 2014. On June 9, 2014, at the claimant's request, she was transferred to the company's Emmetsburg, Iowa location. Ms. Lewis was employed as a part-time crew member being scheduled 23-27 hours per week and was paid by the hour. Her immediate supervisors were Ms. Elizabeth Hansen and Ms. Sue McEnroe. Ms. Lewis was discharged from her employment with Kastim Corporation on October 3, 2014.

Ms. Lewis was discharged on October 3, 2014 because of the employer's need to replace her with a more dependable worker. During the short period of time that Ms. Lewis had been at the employer's Emmetsburg, Iowa facility she had called off work on numerous occasions. Ms. Lewis had called off work primarily due to the illnesses of herself and her children, and had generally followed the employer's expectations by providing notice to the employer of her impending absences.

On one occasion, on about August 20, 2014, the claimant was considered not to have called in properly because she had not called the store before 8:00 p.m. the preceding night or four hours before her 5:00 a.m. starting time the next morning. The claimant had attempted to notify the employer after 8:00 a.m. the preceding night and had attempted to call in the early morning hours on the next day to report her absence due to illness. On October 1, 2014 Ms. Lewis

called in 15 minutes before her scheduled shift. Company policy requires that employees provide four hours of advance notification if they are unable to report for work. On that date, Ms. Lewis was personally ill and had repeatedly attempted to call her employer to report her impending absence due to illness that morning, but was unable to reach the employer's location by phone. The phone was either not answered or busy. Because Ms. Lewis had previously been warned and suspended for failure to properly provide the proper notification, the claimant also sent a text message to Ms. Hansen that morning explaining her inability to reach the employer by telephone. Ms. Hansen, who was also not at the facility, sent a text message back to the claimant telling the claimant to "keep trying." Ms. Lewis was finally able to reach the employer location at approximately 15 minutes before her scheduled shift was to begin. The claimant supplied a doctor's statement verifying that she was unable to work on October 1, 2014. Based upon the number of the claimant's absences and call offs, a decision was made to terminate the claimant from employment because the employer needed a more reliable worker.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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 a discharge matter. See Iowa Code Section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes that at times in the past Ms. Lewis failed to follow the employer's policy with respect to notification of impending absences. Ms. Lewis had been warned about the necessity to call in properly and had been suspended from work as well. The final incident that caused the claimant's discharge took place on October 1, 2014 when the claimant attempted repeatedly to follow the employer's call-in policy but was unable to comply with it because her telephone calls did not go through and remained unanswered at the employer's facility. Ms. Lewis was calling in with compliance to the company's notification policies, but the telephone at the facility was either busy or was not answered. In an effort to ensure that the employer was aware that she was trying to call in as required, Ms. Lewis sent a text message to the store manager informing the store manager of her difficulties that morning, prior to the beginning of her shift. The claimant was advised to "keep trying." When Ms. Lewis's were finally answered, it was 15 minutes before her scheduled shift and her notice was considered untimely. The evidence establishes that the claimant was calling in because she was ill and the claimant subsequently provided a doctor's note confirming that she was unable to work due to illness that day.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that the claimant was discharged under non-disqualifying conditions. The claimant had attempted to comply with the company's call-in policy on the last infraction but was unable to follow the policy through no fault of her own.

The question before the administrative law judge is not whether the employer has the right to discharge this employee for this reason, but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate Ms. Lewis for being unreliable may have been a sound decision from a management viewpoint, the evidence in the record does not establish disqualifying misconduct for the final incident. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated October 21, 2014 (reference 01) is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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