

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANNON M GRAVER
Claimant

APPEAL NO. 16A-UI-11123-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOODWILL INDUSTRIES
Employer

**OC: 09/11/16
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Shannon Graver (claimant) appealed a representative's October 10, 2016, decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Goodwill Industries (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 31, 2016. The claimant participated personally. The employer participated by Erin Blackledge, Lead Human Resources Generalist. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit 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 July 9, 2016, as a full-time production associate one. The claimant signed for receipt of the employer's handbook on May 27, 2016. The employer requires employees to report their absences each day by calling the manager or manager on duty. The claimant was informed that texting was not an acceptable form of communication. The claimant learned the employer's policies in orientation on May 27, 2016. She confirmed that she understood those policies by initialing a New Hire In Store Orientation Form on July 14, 2016. The claimant demonstrated she understood the policy by properly reporting her absences twice.

On August 19, 2016, the claimant was in a car accident. She went to work on August 20, 2016, and left early because she was not feeling well. She was released by the emergency room physician without restrictions on August 20, 2016. The claimant was next scheduled to work on August 23, 2016, and properly reported her absence due to medical issues. The employer told the claimant to take care and let it know what was going on. The claimant did not appear for work on August 24, 25, or 26, 2016. On one of those days she sent a long text to the employer explaining her situation. She went into great detail about her medical condition but did not call and report her absence to the manager.

The claimant saw a chiropractor on August 26, 2016. The chiropractor released the claimant to work with lifting restrictions. On August 26, 2016, the claimant saw a family physician. The doctor did not restrict the claimant from working. On August 30, 2016, the claimant saw a different family physician. He restricted the claimant from working from August 30 through September 12, 2016. On September 7, 2016, the claimant called the employer to inquire about returning to work on September 13, 2016. The employer told the claimant there was no work for the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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).

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 an improperly reported illness which occurred from August 23 to September 7, 2016. The claimant's absence does amount to job misconduct because it was not properly reported. The claimant was discharged for misconduct. She is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's October 10, 2016, decision (reference 03) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs