

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAMMY S MONTROY
Claimant

GREAT RIVER MEDICAL CENTER HUMAN
Employer

APPEAL 20A-UI-15631-S1-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 08/16/20
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Tammy Montroy (claimant) appealed a representative's November 18, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Great River Medical Center (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 4, 2021. The claimant participated personally. The employer provided a telephone number but could not be reached at the time of the hearing. The administrative law judge left two message for the employer. The administrative law judge took official notice of the administrative file.

ISSUE:

The issues include 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 worked for the employer from May 7, 2019, through July 27, 2020, as a full-time registered nurse. She received the employer's handbook. The employer issued the claimant one written warning for attendance but did not warn her she could be terminated.

The claimant was tardy two or three times when she was first hired. She was absent approximately seven times and all absences were properly reported. Five of the seven were due to medical issues. One absence occurred when her daughter threatened to harm herself. The other occurred when her vehicle was vandalized.

The claimant properly reported her absence due to illness on July 21, 22, and 23, 2020. She was nauseous, vomiting, and had a fever. She was unsure if she had the stomach flu or Covid-19. The employer did not ask the nature of the claimant's illness. It took the claimant off the

schedule on July 24 and July 26, 2020. The employer told the claimant to contact the employer on Monday, July 27, 2020.

On July 27, 2020, the claimant continued to be ill and weak. She had not eaten much in days. The claimant was not well enough to call or check her phone. On the evening of July 27, 2020, the claimant looked at her phone and found a message from the employer. The employer terminated her while she was ill on July 27, 2020. On July 28, 2020, the claimant called the employer to confirm the termination. The employer told the claimant she was terminated for excessive absenteeism.

The claimant filed for unemployment insurance benefits with an effective date of August 16, 2020. Her weekly benefit amount was determined to be \$493.00. The claimant received no state unemployment insurance benefits or Federal Pandemic Unemployment Compensation after August 16, 2020.

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).

Iowa Admin. Code r.871-24.32(8) provides:

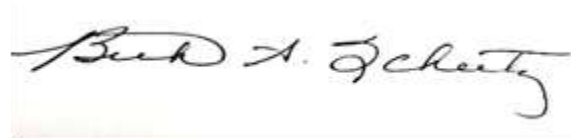
(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). Unreported absences do not constitute job misconduct if the failure to report is caused by mental incapacity. Roberts v. Iowa Department of Job Service, 356 N.W.2d 218 (Iowa 1984). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incidents of absence were due to illness. The claimant was ill from July 21, 2020, through July 27, 2020. All but one day of the claimant's absence was properly reported. On July 27, 2020, the claimant lacked the mental capacity to report to the employer due to her illness.

The claimant's absence does not amount to job misconduct because they were properly reported or the claimant could not report. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's November 18, 2020, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

February 18, 2021
Decision Dated and Mailed

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