

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE A NYWEIDE
Claimant

APPEAL NO. 17A-UI-06409-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

OC: 05/28/17
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The Hon Company (employer) appealed a representative's June 14, 2017, decision (reference 01) that concluded Nicole Nyweide (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 July 21, 2017. The claimant participated personally. The employer participated by Lucas Knox, Member Community Relations Generalist, and Hiedi Rios, Group Lead. 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 April 18, 2016, as a full-time work cell operator. She previously worked for the company from November 17, 2014, to December 5, 2014, and quit to have eye surgery. The claimant signed for receipt of the employer's handbook on April 18, 2016. The handbook states that an employee who accrues nine attendance credits in a rolling calendar year will be terminated. When she was rehired, she told the employer she was going through a custody case and needed time off to go to court. The claimant took the job with the understanding that her absences for court days would not count for attendance points.

The employer issued the claimant a written warning on September 9, 2016, for leaving without notice. On February 9, 2017, the employer issued the claimant a written warning for leaving without notice and tardiness in returning from lunch. The employer notified the claimant that further infractions could result in termination from employment. The claimant initialed an attendance corrective notice indicating a tally of points she received. The employer recorded the claimant's absences on August 29, September 8, and October 7, 2016. She was assessed one point for each absence even though she properly reported her absences to attend a court hearing. As of October 7, 2016, the employer said the claimant had eight attendance points.

On May 19, 2017, the claimant properly reported she would be late for work. The claimant arrived less than a minute late but was escorted off the property after clocking in. The employer terminated the claimant for having nine attendance points.

The claimant filed for unemployment insurance benefits with an effective date of May 28, 2017. The employer participated personally at the fact finding interview on June 13, 2017, by Lucas Knox. The employer did not provide the dates of the all unexcused absences for which the employer terminated the claimant.

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 was unable to provide the dates of the absences that make up the nine attendance credits, the reasons for the absences, and whether each of them were properly reported. Most of the absences were due to court hearings and previously excused by the employer. Without evidence, 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 June 14, 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