

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on April 7, 2005, as a part-time cashier. The claimant was given a verbal reprimand on October 4, 2005, for failure to give her store manager notice when the cigarette stock was low. The warning upset the claimant, and she did not like the store manager. Later on October 4, 2005, the claimant told a co-worker that she had half a mind to close the store early and quit. The claimant also told the co-worker that the co-worker could have the claimant's hours when the claimant quit work.

On October 5, 2005, the assistant manager asked the claimant to leave her keys at the store so the co-worker could use them. The claimant dropped her keys by the store in the morning. Also that morning the store manager discovered the claimant was upset by the reprimand and telephoned the claimant repeatedly to straighten out the situation but could not reach the claimant. The store manager left one telephone message for the claimant at noon.

The claimant was supposed to work at 5:00 p.m. on October 5, 2005. At 4:30 p.m. she discovered she had a flat tire. The claimant proceeded to fix the flat tire without notifying the employer she was going to be late for work. At 5:10 p.m. the store manager left a telephone message for the claimant saying the claimant was fired for failing to appear for work without notice. The store manager asked the claimant for her keys not knowing the claimant had dropped them off earlier for the assistant manager. The claimant received the message at 5:15 p.m., when she returned to her residence after fixing the tire. The claimant was upset by the message and did not contact the employer.

The testimony of the employer and claimant was conflicting. The administrative law judge finds the claimant's testimony to be more credible because the claimant provided a corroborating witness.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was not.

Iowa Code section 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.

871 IAC 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 Department of Job Service, 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). Three incidents of tardiness or absenteeism after a warning constitutes misconduct. Clark v. Iowa Department of Job Service, 317 N.W.2d 517 (Iowa App. 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide sufficient evidence of misconduct at the hearing. The employer terminated the claimant after one incident of failure to notify the employer she would be late for work. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's October 20, 2005 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

bas/kjw