

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

AMY L HOVICK
Claimant

APPEAL NO. 18A-UI-04006-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**EMPLOYER SOLUTIONS STAFFING
GROUP**
Employer

OC: 02/25/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Amy Hovick (claimant) appealed a representative's March 26, 2018, decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Employer Solutions Staffing Group (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 24, 2018. The claimant participated personally. The employer participated by Melanie Haluptzok, Unemployment Benefits Specialist, and Emma Cropp, Staffing Manager. 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 employer is a temporary agency. The claimant was assigned to work as a full-time customer service representative at PurFoods. She signed for receipt of the employer's handbook on December 8, 2017.

PurFoods allowed employees to appear for work a few minutes late and use comp time. The claimant worked a lot of overtime for PurFoods. Once she was so tired from all the overtime, she asked her co-worker to take her calls while she went to the bathroom. She was gone less than five minutes.

Once in early February 2018, she was supposed to be working inbound and outbound calls. She accidentally placed herself on do not disturb. The claimant was still placing outbound calls and did not know about the designation.

The employer did not issue her any warnings during her employment. PurFoods issued her a warning for her absence due to a properly reported illness on December 26, 2017. The claimant only remembers being absent two days. Her four year old child was sick one day and

she was sick the following day with the same illness. PurFoods notified the claimant that further infractions could result in the end of her assignment.

On February 12, 2018, the claimant told PurFoods she would need to take an extended lunch in a few days to have an ultra sound of her thyroid. The claimant had thyroid cancer and needed a longer lunch time for her appointment.

PurFoods ended the claimant's assignment on February 14, 2018. PurFoods told the employer that on February 13, 2018, the claimant was tardy and she put herself on do not disturb. The claimant did neither of those things on February 13, 2018. The claimant sought reassignment within the week. The claimant believed she was terminated because she told PurFoods of her cancer diagnosis.

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). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because she was an eye witness to the events for which she was terminated. The employer did not have information about the dates of absences or dates of performance infractions. The employer had no specific information about any of the alleged misconduct for which the claimant was terminated.

DECISION:

The representative's March 26, 2018, decision (reference 02) is reversed. 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