

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY B MAAS

Claimant

APPEAL NO: 19A-UI-02005-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC

Employer

OC: 02/10/19

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Amy B. Maas, the claimant filed a timely appeal from a representative's unemployment insurance decision dated March 1, 2019, (reference 01) which denied unemployment insurance benefits, finding that the claimant had been discharged on February 13, 2019 for excessive unexcused absences. After due notice was provided, a telephone hearing was held on March 21, 2019. Claimant participated. Employer participated by Mr. Michael Weaver, Manager. Employer's Exhibits A through I and Department Exhibit D-1 were admitted into the hearing record.

ISSUE:

The issue is whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Amy B. Maas was employed by Pilot Travel Centers, LLC from August 20, 2014 until February 13, 2019 when she was discharged. Ms. Maas worked as a full-time deli kiosk worker, working Monday through Friday from 12:00 or 1:00 p.m. until close. Ms. Maas was paid by the hour. Her immediate supervisor was the manager, Mr. Michael Weaver.

Ms. Maas was discharged on February 13, 2019 after she had called off work on December 12, 2018 because of bad driving conditions. Ms. Maas had left for work that day, but had to turn back because of heavy snow and her inability to see the road. The claimant was fearful that she would be involved in an accident or be unable to stay on the road with her small vehicle, due to the severe weather conditions.

Ms. Maas had called off work due to bad driving conditions on January 28 and 29, 2019 and February 7 and February 12, 2019. On each occasion when Ms. Maas called off work due to bad driving conditions, the employer advised her only to "try to make it in." Ms. Maas was not warned or told that her job was in jeopardy. The claimant had received one warning from the employer about attendance that was issued to Ms. Maas on September 10, 2018. The

employer had changed Ms. Maas' schedule to include Sunday work and the claimant had been unable to report on that day because of other employment. The claimant was told that outside employment should not interfere with her work, and if it does so, the claimant should leave her outside job. Another warning was issued to Ms. Maas, but it was for reasons unrelated to her discharge from employment on February 13, 2019.

The company considers any absence from work to be excessive. The determination of whether a worker should be allowed to continue employment or be discharged for attendance infractions is handled on a "case-by-case basis". Ms. Maas' absences from work caused staffing problems and the employer believes that she should have known that being absent would jeopardize her employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes job related misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant is not qualified to receive unemployment insurance benefits if an employer discharges the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the Unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated careless or negligence that equals willful misconduct in culpability. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations that arise out of a worker's agreement of employment. Misconduct is the deliberate violation or disregard of the standard of behavior the employer has the right to expect from the employees or is an intentional and substantial disregard of the employer's interests or the employee's duties and obligations to the employer. 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a.

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires the consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as lack of childcare, or oversleeping are not excused. Absences related to illness or other good cause reasons are considered excused provided that the employee has complied with the employer's policy regarding notifying the employer of the absence.

In the case at hand, the claimant had been absent due to very bad weather conditions. On each occasion, Ms. Maas had attempted to travel to work by automobile, but after making attempts to drive to work, the claimant reasonably concluded that she could not do so because she could not see to stay on the road.

On each occasion, after trying to drive to work, Ms. Maas provided notice to the employer of her inability to make it to work due to weather, the employer had only advised her that she "should try to make it." The employer did not warn Ms. Maas that her absences were placing her employment in jeopardy. The only warning issued to the claimant regarding attendance was given to Ms. Maas on September 2018. The claimant has missed work because of outside employment on a date when the employer had unexpectedly changed her work schedule. For these reasons, the administrative law judge concludes that in this case the claimant was not adequately warned prior to being discharged. If an employee is subject to possible discharge,

reasonable, (preferably written,) notice should be given to the employee advising them that their employment is in jeopardy specifying the conduct that is unacceptable to the employer. In this case, the claimant's reasons for calling off work were reasonable under the attendance circumstances and the claimant did not know that her job was in jeopardy.

The question in this case is not whether the employer has a right to discharge an employee for this reason, but whether the discharge is disqualifying under the provisions of the Iowa Employment Security law. While the decision to terminate Ms. Maas may have been a sound decision from a management viewpoint, the evidence does not establish intentional disqualifying misconduct on the part of the claimant sufficient to warrant the denial of job insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's unemployment insurance decision dated March 1, 2019, reference 01 is reversed. Claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn