IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

AMANDA L CHANDLER
Claimant

KRAFT HEINZ FOODS COMPANY
Employer

APPEAL NO. 18A-UI-09088-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/05/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Amanda Chandler (claimant) appealed a representative's August 20, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Kraft Heinz Foods Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 18, 2018. The claimant participated personally. The employer participated by Sharon Bull, Human Resources Generalist.

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 February 2, 2015 as a full-time production team member. She signed the employer's handbook on February 2, 2015, but did not receive a copy. The handbook states that employees will receive a written warning after receiving twelve attendance points and terminated after accruing fourteen attendance points.

The employer issued the claimant written warnings for attendance on March 22 and September 14, 2017. She accrued 12.5 and 14.5 attendance points respectively. All of the claimant's absences were due to illness and properly reported. The claimant disputed the point total. She had requested and was granted Family Medical Leave (FMLA). She believed the third party company calculating her leave had made mistakes.

On October 11, 2017, the employer issued the claimant a written warning for accruing 19.5 attendance points. The employer did some investigation and allowed the claimant to continue working. It specified in the warning that she would be terminated if she accrued two more attendance points or 21.5 points. The employer told the claimant it would have a meeting with the third party company and investigate the issues. The employer did not.

The claimant continued to work for the employer and properly report her FMLA absences. Her last absence occurred on July 9, 2018. On August 1, 2018, the employer performed an absenteeism audit and thought the claimant had twenty-seven attendance points. On August 2, 2018, the employer terminated her.

On August 5, 2018, the claimant contacted the third party company. On August 15, 2018, it notified the claimant and the employer that it made mistakes. At the time of the claimant's termination, the third party company calculated the claimant had accumulated twenty-one attendance points.

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).

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). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge.

In this case, the employer did not properly investigate the number of attendance points the claimant had accrued by contacting the third party company prior to the termination. It waited twenty-three days from the date of the claimant's last occurrence to terminate her. Lastly, the employer terminated the claimant for properly reported medical absences.

The last incident of absence provided by the employer was a properly reported illness which occurred on July 9, 2018. The claimant's absence does not amount to job misconduct because it was properly reported. In addition, the employer did not provide sufficient explanation for the delay in termination. 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 August 20, 2018, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs