IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

PATRICIA F DORO Claimant **BARILLA AMERICA INC** Employer	**APPEAL 21A-UI-16351-DH-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/09/21** **Claimant: Appellant (2)**

Iowa Code § 96.2(A) - Discharge for Misconduct
Iowa Code § 96.5(1) - Voluntary Quit

STATEMENT OF THE CASE:

The claimant/appellant, Patricia Doro, filed an appeal from the July 19, 2021, (reference 01) unemployment insurance decision that concluded she was not eligible for unemployment insurance benefits due to her discharge on May 3, 2021 for excessive unexcused absenteeism after being warned. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for September 16, 2021. The claimant participated. The employer did not register for the hearing and therefore did not participate in the hearing.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony and reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a machine operator from October 7, 2019, until this employment ended on May 2, 2021, when she discharged. The employer, in fact finding asserted claimant was out on FMLA/STD and did not return to work when her FMLA/STD leave came to an end, but did not state the leave end date. Employer has a policy on absences found in the employee handbook, which Claimant had received a copy. Claimant did not have any unexcused absences nor received a write ups or warnings regarding absences. Claimant admits to being on FMLA/STD leave. Claimant timely came back to work before her total leave time was exceeded. Claimant work approximately eight to ten days in in April 2021. Claimant had two excused absences for timely calling in to work and talking to Lisa in human resources on April 27th and 28th to report she was not coming in to work. Claimant's last day worked was April 29, 2021. She advised her employer that she had a doctor's appointment on April 30, 2021 and would not be to work. Claimant provided a doctor's letter regarding her April 27 and 28, 2021 absence. April 30, 2021, claimant received an e-mail from employer stating that she was terminated from employment and that no reason was given. Claimant was not previously disciplined and was not aware her position was in jeopardy.

Claimant was otherwise willing and able to work and did find other full-time employment starting June 28, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

The fact-finding worksheet coupled with claimant's testimony has employer failing to meet their burden of proof. Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

DECISION:

The July 19, 2021 (reference 01) unemployment insurance decision is REVERSED. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Claimant has two addresses listed, and provided address is the current one during the hearing. That updated address is noted on the first page of this decision. The undersigned advises her in this decision to contact IWD customer service at 1-866-239-0843 as soon as possible to update her contact information.

Darrin T. Hamilton
Administrative Law Judge

September 22, 2021
Decision Dated and Mailed

dh/ol