

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASEY C RODRIGUEZ
Claimant

APPEAL NO: 17A-UI-13142-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EYM KING OF IOWA LLC
Employer

OC: 10/15/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 15, 2017, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 17, 2018. The claimant participated in the hearing. Rose Hicks, District Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time crew member for EYM King of Iowa from May 7, 2014 to October 12, 2017. The claimant was discharged after doctor excused her from work for two days and the employer refused to put her back on the schedule.

The claimant had a medical test October 5, 2017, and her physician took her off work until October 7, 2017. The claimant informed General Manager Moses Ward about her appointment and following the appointment that her doctor excused her from work until October 7, 2017. Mr. Ward told the claimant, "That's okay. Don't bother coming. We don't need you." The claimant did not know if he meant she was not needed for those two days or permanently and because she did not feel well she decided to check with him in a couple of days when she was released to return to work. On October 12, 2017, the claimant called Mr. Ward and asked if she was on the schedule and he told her he needed to put her back on it. The claimant said she could also work days if needed and Mr. Ward stated he would get back to her but never did and the claimant determined her employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

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

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 proving disqualifying misconduct. *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 substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant made a reasonable request for a total of three days off following a medical appointment and procedure. The employer rather cryptically stated, "That's okay. Don't bother coming. We don't need you." The claimant was not sure if he meant she was not needed for those few days or permanently and because she was not feeling well she waited a few days before calling him again to see if she was on the new schedule but he said she was not and he would get back to her. There is no evidence he ever followed through and returned her to the schedule and he did not ever call the claimant again and notify her she was back on the schedule. Under those circumstances, the administrative law judge must conclude the employer effectively terminated the claimant's employment by removing her from the schedule.

and then telling her she would be returned to the schedule and she would be informed of when to return but was never contacted again. Therefore, benefits must be allowed.

DECISION:

The December 15, 2017, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn