

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**INGRID R BARBEE**

Claimant

**APPEAL NO. 13A-UI-03061-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PACKERS SANITATION SERVICES INC**

Employer

**OC: 02/17/13**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated March 12, 2013, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on April 11, 2013. Claimant participated. Although duly notified, the employer's witness was not available at the telephone number provided. Messages were left. Claimant's Exhibits A and B were received into evidence.

**ISSUE:**

The issue is whether the evidence in the record establishes 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: Ingrid Barbee began employment with Packers Sanitation Services, Inc. on March 30, 2010. Ms. Barbee was most recently assigned to work as a full-time office cleaner for the company and was paid by the hour. The claimant had been placed in the position of cleaning offices because she had supplied medical documentation to the employer in the past prohibiting claimant from heavier cleaning work.

Ms. Barbee was off work due to a serious medical issue from December 30, 2012 until January 10, 2013. The claimant had supplied medical documentation to the employer supporting her need to be absent due to a serious bacterial infection and a subsequent medical condition that developed because of the prescription medications that were prescribed for the claimant.

Ms. Barbee returned to her employment with Packers Sanitation Services, Inc. on January 10, 2013. At that time the claimant was questioned by Mr. Chris McCabe about why she had been absent and the claimant perceived that Mr. McCabe was angry because she had been unable to report to work although she had provided medical documentation supporting her need to be absent for medical reasons.

Instead of allowing Ms. Barbee to perform her usual assigned tasks cleaning offices, Mr. McCabe gave Ms. Barbee the choice that day of "working the floor or going home." Ms. Barbee attempted to comply with Mr. McCabe's directive and began performing heavier cleaning work in the industrial setting. Because of the job requirements which include carrying buckets of soapy water upstairs in violation of her previous medical documentation, the claimant injured her knee and was unable to report to work the next day. Ms. Barbee called in the following day, Friday, January 11, 2013, and reported she could not report to work because she had been injured. When the claimant reported to work on Monday, January 14, 2013, Mr. McCabe would not allow the claimant to resume her duties but instead required the claimant to have a specific doctor that had treated her before to fill out a work safety and duty evaluation for the claimant. Ms. Barbee complied with the directive and submitted the paperwork to be completed by the doctor that Mr. McCabe had specified. Ms. Barbee called in each day to report her status to the company. Ms. Barbee was given no indication that she was not following the employer's directives or that the paperwork needed to be submitted by a specified date. The claimant, nevertheless, attempted to have her physician complete the paperwork so that she could return to work. When the paperwork was returned by her physician, Ms. Barbee contacted the employer on or about January 22, 2013 with the required paperwork and ready to resume her duties. Claimant was informed at that time, however, that she had already been discharged from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes 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:

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.

871 IAC 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 employer has the burden of proof in establishing disqualifying job misconduct. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The Supreme Court in the State of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is a form of job misconduct. The Court held, however, that the absences must both be excessive and unexcused and further held that absences due to illness or other excusable reasons are deemed excused by the Court if the employee properly notifies the employer.

In the case at hand, claimant had been absent due to a verifiable medical condition and had properly notified the employer of her absences. Upon returning to work the claimant was assigned to work that exceeded previous restrictions that had been imposed by her physician causing the claimant to be injured and miss another day's work. When the claimant then returned to work she was required to have a safety and fitness for duty evaluation completed before she could return to work. The claimant complied but was discharged when she attempted to return with the documentation that her employer had required. The administrative law judge concludes based upon the evidence in the record that the employer has not sustained its burden of proof in establishing the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are allowed, providing Ms. Barbee is otherwise eligible.

**DECISION:**

The representative's decision dated March 12, 2013, reference 01, is reversed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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