

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

COURTNEY M OLIVER
Claimant

APPEAL NO: 18A-UI-02194-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HIGBEE WEST MAIN LP
Employer

OC: 01/21/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 7, 2018, reference 01, 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 March 14, 2018. The claimant participated in the hearing. Claire Darling, Assistant Sales 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 part-time sales associate for Higbee West Main (Dillards) from October 5, 2016 to December 1, 2017. She was discharged while on a leave of absence.

The claimant went on a leave of absence due to pregnancy September 12, 2017. The doctor's note and paperwork she provided the employer stated she could return to work January 11, 2018. The employer sent her a certified letter and a postal service letter November 24, 2017, instructing her to notify it of her date of return by November 27, 2017. The claimant did not receive the letter until November 28, 2017. She called the employer and reminded it her doctor's note said she could return January 11, 2018. The employer terminated her from its system December 1, 2017, stating she did not respond to the letter notifying it of her return date in a timely manner.

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 provided the employer with her medical paperwork including the note from her doctor stating she could return to work January 11, 2018. Despite receipt of that information, the employer required the claimant to contact it and tell it when she was returning to work. The claimant did not receive the letter from the employer until after the due date and called the employer at that time to remind it of her doctor's note stating she could return January 11, 2018, but despite that information the employer terminated the claimant from its system December 1, 2017. The claimant provided the employer with sufficient information about her return to work and the employer has not demonstrated any misconduct on the part of the claimant. Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proof. Therefore, benefits are allowed.

DECISION:

The February 7, 2018, reference 01, 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