

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MELINDA S MEYER
Claimant

APPEAL NO: 20A-UI-06296-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARTERS LEASING INC
Employer

OC: 04/05/20
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 8, 2020, 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 July 21, 2020. The claimant participated in the hearing. Samantha Rogers, Human Resources Consultant and Sarah Luke, Office Manager, participated in the hearing on behalf of the employer. Christine Gorrell, Human Resources Consultant, observed the hearing.

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 dispatcher for Carters Leasing from March 7, 2018 to February 27, 2020. She was discharged because she could not return to work following FMLA and two leaves of absence.

The claimant was diagnosed with vestibular migraines. Stress brought on dizziness preventing her from being able to drive or sit upright. She was on FMLA from September 23, 2019 through December 13, 2019, but could not return at that time. The employer granted her a medical leave of absence from December 16, 2019 through February 10, 2020, and she still was not able to return. The employer agreed to allow the claimant a second medical leave of absence which ran from February 11, 2020 through February 27, 2020. The claimant had a doctor's appointment February 27, 2020, and hoped to be released to return to work on that date but her doctor did not release her until April 1, 2020. The employer could no longer hold her position due to business needs and terminated the claimant's employment February 27, 2020.

The parties negotiated a severance package and the claimant was paid \$3,500.00 for five weeks which ran from February 27, 2020 through April 2, 2020. At one point during the negotiation the employer proposed the claimant give up her right to file for unemployment

benefits in exchange for the settlement payment but that was not part of the final severance package. The claimant was released to work without restrictions April 1, 2020.

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).

Iowa Admin. Code r. 871-24.32(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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

The claimant's absences were covered by FMLA and then two medical leaves of absence between September 23, 2019 and February 27, 2020. While the claimant was absent for a long period of time and the employer held her job as long as it could, considering its business needs, the claimant's absences were excused. Because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Therefore, benefits must be allowed.

The parties negotiated a severance package and the claimant received \$3,500.00 for the five weeks following her separation date of February 27, 2020. Five weeks after her separation was April 2, 2020. The claimant filed a claim for unemployment insurance benefits with an effective date of April 5, 2020, which was after the severance pay was over.

The claimant was released to work without restrictions April 1, 2020. Consequently, she is considered able and available for work effective April 5, 2020, when she filed her claim for benefits.

DECISION:

The June 8, 2020, 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

August 3, 2020
Decision Dated and Mailed

je/sam