

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARISA L MILLER

Claimant

APPEAL NO. 14A-UI-00569-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM

Employer

OC: 12/15/13

Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Marisa Miller (claimant) appealed a representative's January 6, 2014, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Genesis Health System (employer) for leaving work without the employer's permission. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 7, 2014. The claimant participated personally. The employer participated by Sara Griffin, Clinic Supervisor, and Beau Dexter, Human Resources Director. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 13, 2012, as a full-time medical assistant. The claimant signed for receipt of the employer's handbook and code of conduct.

On May 20, 2013, the employer issued the claimant written warning for inappropriate behavior. On November 1, 2013, the employer issued the claimant a written warning for sleeping. There was a dispute as to whether the claimant was on her lunch break. The employer did not warn the claimant either time that she could be terminated for her actions.

On December 16, 2013, the claimant came to work after seeing her doctor. She was ill and vomiting at work. The registered nurse and other co-workers encouraged the claimant to go home. The claimant tried to reach her supervisor on her cell phone but got a recording. The claimant was told to call the cell phone by the office staff because the supervisor was not on site. The claimant's medical condition would not allow her to stay any longer. She tried to call her supervisor again and there were no other supervisor's to notify. She found a co-worker to cover her job duties and the claimant left work at 3:15 p.m. rather than at 5:00 p.m. On December 17, 2013, the employer terminated the claimant for improper reporting of her absence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 6, 2014, decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css