

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**NATALIE S COTTRELL**  
Claimant

**APPEAL NO. 18A-UI-08380-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 07/15/18**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Natalie Cottrell (claimant) appealed a representative's July 31, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Hy-Vee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 28, 2018. The claimant participated personally. The employer was represented by Barbara Buss, Hearings Representative, and participated by Jason Beal, Store Director, and Amy Jones, Account Coordinator/Human Resources Manager. The employer offered and Exhibit 1 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 June 13, 2015, as a full-time certified pharmacy technician. She signed for receipt of the employer's handbook on June 13, 2015, but does not remember getting a copy of the handbook.

The claimant properly reported her absences due to illness on January 3, 5, March 13, 14, May 15, and 17, 2018. She properly reported her absences due to sick children on January 23, February 7, 9, March 27, April 25, May 10, and 11, 2018. On February 6, 2018, she properly reported her absence due to an unknown reason. The claimant was tardy for work on April 25, May 5, 6, and June 7, 2018. On June 7, 2018, the employer wrote a warning stating she had been absent five shifts and tardy eleven shifts in the last month. The dates of those shifts were not listed in the warning. The warning stated that "further instances of missed work without a doctor's note or unexcused tardiness would result in disciplinary action up to and including possible termination". The employer remembers giving the claimant the warning on June 7, 2018, but the claimant did not receive a warning on this date.

The claimant was between two minutes and eleven minutes tardy for work on June 8, 12, 13, 14, 15, 18, 19, 21, and 25, 2018. The claimant remembers receiving the warning dated June 7, 2018, on June 25, 2018. Later on June 25, 2018, the claimant left for lunch at 12:30 p.m. She reported to her supervisor that she was vomiting and could not return to work. This was the last day the claimant performed services for the employer. She properly reported her absence due to illness on June 26, 27, 28, and 29, 2018. She was in the hospital on June 27 and 28, 2018.

On July 2, 2018, the claimant was scheduled to work but did not appear or notify the employer of her absence. She called her supervisor after her shift and said she had been in the hospital. The supervisor told the claimant she could not return to work until she provided a doctor's note for June 25, 2018, and a note releasing her to return to work. The claimant provided the proper note to her supervisor for her illness from June 26 through July 10, 2018. The claimant was not released to return to work until July 10, 2018. She did not have a note for June 25, 2018, because she did not go to a doctor on that date.

On July 11, 2018, the claimant asked the store director for a meeting to discuss her situation. At the meeting on July 11, 2018, the store director terminated the claimant for not providing a doctor's note for her absence on June 25, 2018, and being tardy on June 25, 2018.

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

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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).

Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant was warned that she would be terminated if she were absent without supporting documentation. She failed to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's July 31, 2018, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs