IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TIFFANY CLAY
Claimant

HEARTLAND EMPLOYMENT SERVICES
Employer

APPEAL NO: 15A-UI-06089-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/19/15
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 19, 2015, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 8, 2015. The claimant participated in the hearing. James Farmer, Director of Human Resources and John Foss, Food Service Director, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

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 cook for Heartland Employment Services from July 27, 2008 to April 21, 2015. This employer bought the business and rehired the claimant October 29, 2014.

The claimant's hours ran from 5:45 a.m. to 1:45 p.m. On December 9, 2014, the claimant received a written warning for failing to call the employer at least two hours prior to her shift to notify it she would not be at work December 8, 2014 (Employer's Exhibit One). On March 31, 2015, she received a final written warning after she called the employer at 5:35 a.m. to say she would be 15 minutes late but had not arrived by 6:20 a.m. (Employer's Exhibit Two). A dietary aide called the employer at that time to report the claimant was not at work and the employer attempted to call her several times that day but could not reach her. The claimant testified she was having personal problems and her husband took her phone which prevented her from calling the employer back or answering its calls. The March 31, 2015, absence was considered a no-call/no-show and the claimant was informed that because it was a Major/Type B violation, the next occurrence would result in termination (Employer's Exhibit Four).

On April 19, 2015, the claimant called a dietary aide and stated she would be 15 minutes late. When she arrived at 6:00 a.m. the door codes had been changed and she tried to call the main

number to get the new code from another staff member but did not get an answer. She then called the dietary aide to get the new code number so she could enter the building. She had been in the kitchen for five to ten minutes when she observed the dietary aide in the dining room talking to the employer on the phone and stating the claimant had not yet arrived at work. When the employer reported for work at 7:00 a.m. he prepared the claimant's termination paperwork but did not present them to her until April 21, 2015.

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:
>
> 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.

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 had two incidents of improperly reported absenteeism and one incident of improperly reported tardiness in nearly six months of employment with the new owners of the business, after holding this position for approximately six years with the previous owner. While not condoning the claimant's absences or failure to properly report her absenteeism and tardiness at least two hours prior to the start time of her shift, the claimant's second absence, which was considered a no-call/no-show, occurred because her husband took her phone and prevented her from using it. Consequently, the administrative law judge concludes those three incidents in five and one-half months do not rise to the level of excessive, unexcused absenteeism as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The May 19, 2015, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/css