

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MONIQUE L BAKER
Claimant

APPEAL NO. 18A-UCFE-00031-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AT & T MOBILITY SERVICES LLC
Employer

OC: 10/01/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

AT & T (employer) appealed a representative's August 29, 2018, decision (reference 03) that concluded Monique Baker (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 26, 2018. The claimant participated personally. The employer participated by Amanda Lange, Hearings Representative; Anthony Smith, Area Sales Manager; Joe Gordon, Team Sales Manager; and Richard Sebahar, Lead Analyst Asset Protection Department. Exhibit D-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 November 13, 2017, as a full-time customer service representative one. She signed for receipt of the employer's handbook. The handbook states, "An employee shall be paid up to three (3) days at his/her basic wage rate for the necessary scheduled time absent due to the funeral of a member of the immediate family." An additional unpaid day may be granted for travel to a location more than two-hundred miles from the employee's home address. Among others, the policy defining immediate family included grandfathers, grandmothers, and former legal guardians.

In February 2018, the claimant told the attendance manager that her grandfather passed away in Mississippi. The attendance manager entered bereavement leave for the claimant on February 7, 8, 9, and 10, 2018. No grandchildren were listed on the funeral brochure.

The claimant's grandmother, Ruthie Dell Fairchild, died on May 22, 2018. The claimant went to the attendance manager and asked for bereavement leave. The attendance manager entered the leave for May 24, 2018. The claimant entered the leave for May 30 and 31, 2018. The funeral was on May 30, 2018. At the funeral of the claimant's mother's mother, the claimant noticed that her name was not listed as a grandchild on the funeral brochure. The claimant understood that her own mother was young when the claimant was born. Her grandmother

raised the claimant until her mother was able to take over the responsibilities of parenthood. The claimant asked her mother if Ruthie Dell Fairchild was her blood grandmother. Her mother did not answer the question with any certainty.

The claimant returned to work but suffered panic and anxiety attacks. She sought accommodations and had a pending Americans with Disability Act claim. On June 22, 2018, the employer began an investigation into whether the claimant falsified her request for bereavement leave based on the fact that the claimant was not the grandchild of Ruthie Dell Fairchild. It did not ask any questions about guardianship.

On July 19, 2018, the claimant arrived at work and immediately notified her supervisor she was having a panic attack. The supervisor told her she should push through and stay at work. Later that same day, the investigator called and questioned the claimant about her relationship with Ruthie Dell Fairchild. The employer allowed her medical leave as soon as the investigator finished questioning her. The investigation was complete on July 24, 2018. The employer determined the claimant was not a blood relative of Ruthie Dell Fairchild and, therefore, she falsified her bereavement leave. The employer terminated the claimant on July 30, 2018.

The claimant filed for unemployment insurance benefits with an effective date of October 1, 2017. The employer provided the name and number of Tilinia Davidson as the person who would participate in the fact-finding interview on August 24, 2018. The fact finder called Ms. Davidson but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided some documents for the fact finding interview. The employer did not identify the dates or submit the specific rule or policy that the claimant violated which caused the separation.

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, 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence to prove willful misconduct. The claimant believes Ms. Fairchild was her grandmother and former legal guardian. The employer has provided no information to the contrary. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's August 29, 2018, decision (reference 03) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs