IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TROY J BERGFELD
Claimant

CENTRAL IOWA HOSPITAL CORPORATION
Employer

APPEAL NO. 12A-UI-01934-S2

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/08/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Troy Bergfeld (claimant) appealed a representative's February 14, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Central Iowa Hospital Corporation (employer) for excessive unexcused absenteeism after having been warned. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for March 28, 2012, in Des Moines, Iowa. The claimant was represented by Joseph Glazebrook, Attorney at Law, and participated personally. The employer was represented by Anna Mundy, Attorney at Law, and participated by Melissa Scaparro, Supervisor/Clinical Staffing, and Ashley Wirtjes, Human Resources Business Partner. The employer offered and Exhibits One, Two and Three were 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 October 5, 2009, as a full-time patient care technician. The claimant signed for receipt of the employer's handbook on May 26, 2010. The employer issued the claimant written warnings for attendance on February 14, October 24 and November 7, 2011. On December 12, 2011, the employer issued the claimant an information notice indicating that further infractions could result in termination from employment. All of the claimant's absences were due to medical issues and properly reported.

The claimant suffered work-related injuries on November 14, and December 4, 2011. Any absences that resulted from those injuries were not excused by the employer and those absences counted as occurrences under the employer's absenteeism policy even though the employer's workers' compensation carrier covered the claimant's medical expenses for those injuries.

The claimant worked part of the day on December 27, 2011. The claimant left for a doctor's appointment. That partial day absence counted as an occurrence. The claimant spoke to the employer's human resource person who handled workers' compensation cases. He asked that he be reassigned to a position that did not require him to sit at a desk all day. The light duty assignment aggravated the claimant's work injury. The person told the claimant not to return to work until he heard from her. The claimant never heard from the person and did not return. The employer counted each day of absence as an occurrence. On January 11, 2012, the employer told the claimant he was terminated due to absenteeism.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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). The claimant was terminated for following the instructions of the employer and absence due to a work-related injury. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's February 14, 2012 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs