IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JAMES Y DAK
Claimant

JOHN MORRELL & COMPANY
Employer

APPEAL NO: 09A-UI-16035-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/04/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

James Y. Dak (claimant) appealed a representative's October 22, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from John Morrell & Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 1, 2009. The claimant participated in the hearing. Steve Joyce appeared on the employer's behalf. Mary Chol served as interpreter. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 4, 2008. He worked full time as a laborer on the second shift in the employer's pork processing facility. His last day of work was September 21, 2009.

On September 22, September 23, September 24, and September 25 the claimant called in absences reported as due to illness or injury. On September 28 the claimant still did not feel well be came to the employer's facility. There he saw the company nurse who gave him a note to give to his supervisor that he was to be off work for three more days. The claimant gave the note to his supervisor and left.

The employer treated the claimant as a no-call/no-show for work on September 28, September 29, and September 30. On October 1 he received a letter and spoke to his supervisor; he was informed that he no longer had a job as the employer considered him to have voluntarily quit under its three-day no-call/no-show job abandonment policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that he quit by job abandonment by being a three-day no-call/no-show in violation of company rule. The claimant reasonably believed that by providing his supervisor with the nurse's note on September 28 covering three days he did not separately need to call in. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was his absence from work. Excessive unexcused absences can constitute misconduct, however, in order to establish the

necessary element of intent, the final incident must have occurred despite the claimant's knowledge that the occurrence could result in the loss of his job. Cosper, supra; Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). Here, the employer knew or should have known that the claimant would be absent for an extended period of time for a medical reason. Floyd v. Iowa Dept. of Job Service, 338 N.W.2d 536 (Iowa App. 1986). The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's October 22, 2009 decision (reference 01) is reversed. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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