

up appointment sometime before September 16. At that appointment the treating physician found claimant ready to return to work without restriction on September 16 with a follow up appointment set for September 29. Claimant did not communicate with employer about the appointment just before September 16 and did not advise QDS or Qwest that he made another appointment for September 29.

The center team leader and QDS contacted claimant on September 16 and left a voice mail for him at his home to return to work on September 19 since his benefits were exhausted. Claimant did not report to work between September 19 and 26 because he does not check the home voice mail but acknowledged receipt of the voice mail on Saturday, September 24 and finally returned the call on September 26.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Claimant failed to return to work on September 16 when he was released without restriction. Employer gave him reasonable notice of the return to work date by leaving a message on his home phone machine. It was claimant's responsibility to regularly and frequently check his phone messages at home and maintain clear communication with his physician and his employer. He failed to do any of these three things and the cumulative effect of his negligence amounts to excessive unexcused absenteeism and is misconduct. Benefits are denied.

DECISION:

The October 12, 2005, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

dml/kjw