

2005 because of his absences on September 13, 14 and 15, 2005. Mr. Penrod's wife was drinking heavily at the time. The couple has two children, a three-year-old who is not yet in school and a six-year-old. Mr. Penrod missed work to care for his children. Mr. Penrod had discussed the situation with Human Resources Director Tom Kunkle and with his direct supervisor. The situation had been going on since late May 2005.

Mr. Penrod contacted the employer on each of the three days in September that he missed. On the 14th, however, he did not do so until after his shift. On the 15th he indicated that he would be late but did not ever report to work.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with his work. Although the question is close, the administrative law judge concludes that it does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Excessive unexcused absenteeism is misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). On the other hand, absence due to medical conditions cannot be held against an employee for unemployment insurance purposes provided the individual properly reports the absence to the employer. See Higgins and 871 IAC 24.32(7). While the claimant was not suffering from a medical condition, the evidence persuades the administrative law judge that the claimant's wife was. The effect of this medical condition was that the claimant was forced to choose between caring for his two young children or reporting to work. Considering his calls to the employer on the days of the absences and his prior conversations with the Human Resources Director and his supervisor, the administrative law judge concludes that he properly notified the employer of the absences with the exception of September 14, 2005, the day on which he called after the end of his shift. A single unexcused absence, however, is not sufficient to establish excessive unexcused absenteeism. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989). The administrative law judge concludes that disqualification is not appropriate. Benefits are allowed.

DECISION:

The unemployment insurance decision dated October 3, 2005, reference 02, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

kkf/kjw