

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRILOKKUMAR M PANCHAL
Claimant

APPEAL NO. 12A-UI-05278-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CIVIC CENTER OF GREATER DES MOINES
Employer

**OC: 04/08/12
Claimant: Appellant (4)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Trilokkumar Panchal (claimant) appealed a representative's April 26, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Civic Center of Greater Des Moines (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 30, 2012. The claimant participated personally. The employer participated by Bill McElrath, Business Director. The claimant offered and Exhibit A was received into evidence.

ISSUES:

The issue is whether the claimant was separated from employment for any disqualifying reason and whether the claimant is able and available for work.

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 January 17, 2011, as a part-time on call building services attendant. The employer has a handbook but the claimant did not receive a copy. The employer did not issue the claimant any warnings during his employment.

On March 8, 2012, the claimant reported to the employer that he did not feel well and could not appear for work. On March 9, 2012, the claimant reported to the employer that he was hospitalized. The claimant was unable to call the employer after March 9, 2012, due to a heart attack. He was hospitalized first in Des Moines, Iowa, and later in Iowa City, Iowa. He was released from the hospital on March 27, 2012. The employer sent the claimant a termination letter on March 19, 2012. The claimant responded by letter with the explanation for his absence. The employer did not respond to the claimant. The claimant filed for unemployment insurance benefits with an effective date of April 8, 2012.

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:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Unreported absences do not constitute job misconduct if the failure to report is caused by mental incapacity. Roberts v. Iowa Department of Job Service, 356 N.W.2d 218 (Iowa 1984). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was an improperly reported illness. The claimant's absence does not amount to job

misconduct because the claimant could not properly report his absence due to physical incapacity. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes he is not.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness he is considered to be unavailable for work. The claimant was in the hospital and has not been released to return to work. He is considered to be unavailable for work after March 8, 2012. The claimant is disqualified from receiving unemployment insurance benefits beginning March 8, 2012, due to his unavailability for work.

DECISION:

The representative's April 26, 2012, decision (reference 01) is modified in favor of the appellant. The employer has not met its proof to establish job related misconduct. Benefits are allowed. The claimant is disqualified from receiving unemployment insurance benefits beginning March 8, 2012, due to his unavailability for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs