

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CHRISTIAN J SIMON
Claimant

APPEAL NO. 18A-UI-04936-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DECKER TRUCK LINE INC
Employer

OC: 03/25/18
Claimant: Appellant (2)

Section 96.5-1 - Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Christian Simon (claimant) appealed a representative's April 16, 2018, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Decker Truck Line (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 15, 2018. The claimant participated personally. The employer participated by Courtney Bachel, Director of Human Resources, and Willie Edgerton, Night Operations Supervisor. The employer offered and Exhibit 1 was 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 January 15, 2018, as a full-time night operations employee working 11:00 p.m. to 6:00 a.m. He signed that he could access the employer's online handbook on January 15, 2018. The handbook stated, "When an employee fails to report for work and does not report the absence to their supervisor within one hour of the start of their shift, they will be issued a No Call/No Show." At orientation training, the claimant was told that absences were to be reported to the employer thirty minutes prior to the start of the shift.

When the claimant reported to work he got in a line and a member of management clocked him in. On January 16, 21, 23, 28 2018, the claimant was clocked in at 11:01 p.m. On January 20, and 27, 2018, the claimant was clocked in at 11:02 p.m. On February 28, 2018, the claimant was clocked in at 11:03 p.m. The claimant admitted he overslept on some occasions. On January 15, 2018, the claimant was clocked in at 11:11 p.m. On January 31, 2018, the claimant was clocked in at 11:23 p.m. and 12:10 a.m. and was counted tardy twice. On February 14, 2018, the claimant was clocked in at 11:12 p.m. The claimant reported his absences due to illness thirty minutes prior to the start of his shift on January 22 and January 29, 2018.

On March 5, 2018, the employer issued the claimant a written warning for attendance. The employer stated, "Lates or absences not reported at least an hour before your shift are technically considered no call no shows per company policy". This was the first time the claimant learned of this reporting requirement. The warning indicated the employer had a ninety-day probationary period in which it could discipline employees without following the progressive disciplinary steps in the attendance policy. The employer notified the claimant that further infractions would result in termination from employment.

On March 27, 2018, the claimant did not feel well. He thought he could sleep off the diarrhea and vomiting issues. The claimant woke, got ready for work, and was ready to leave at about 10:30 p.m. when the problems came back. After taking care of himself, the claimant called the employer at about 10:36 p.m., to say he could not work due to illness. The employer terminated the claimant on March 28, 2018.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(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 illness which occurred on March 27, 2018. The claimant's absence does not amount to job misconduct because it was properly reported to the best of the claimant's ability. The claimant could not report an illness if he is not suffering from it. He did not realize he would not be able to work due to the illness until he was out of compliance with the employer's rules. His failure to report was not deliberate. 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.

DECISION:

The representative's April 16, 2018, decision (reference 02) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs