IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ERIC A COUCHMAN Claimant **AGRILAND FS INC** Employer	**APPEAL 15A-UI-11989-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 10/04/15** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 23, 2015 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 13, 2015. Claimant participated. Allison Steuterman, Attorney, appeared on behalf of claimant. Employer participated through payroll and benefits administrator Katie Seidler and business manager Shelby Cork.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a location manager from September 3, 2002 and was separated from employment on October 5, 2015; when he was discharged.

On May 1, 2015, claimant was placed on Family and Medical Leave Act (FMLA) leave. Claimant was to remain on leave until he provided medical documentation from a doctor. On May 15, 2015, claimant sent Ms. Seidler a letter asking her to fill out a form for his long-term disability. On May 20, 2015, Ms. Seidler requested a certificate of health care provider before she could fill out the long-term disability form. On June 3, 2015, Ms. Seidler received a certificate of health care provider from claimant. On June 4, 2015, Ms. Seidler e-mailed the form for long-term disability to claimant.

On June 9, 2015, Ms. Seidler mailed claimant a letter that, because of the certificate of health care provider, the employer was placing him on paid medical leave to run current with his Family and Medical Leave Act (FMLA) leave. Ms. Seidler backdated everything to May 1, 2015. Ms. Seidler also required a new certificate of health care provider no later than July 2, 2015. On June 24, 2015, Ms. Seidler sent a reminder letter for the new certificate of health care provider by July 2, 2015. On June 29, 2015, claimant sent a new certificate of health care provider and informed the employer he would not been seen again by his doctor until July 1, 2015. This met the requirements the employer needed. On July 14, 2015, Ms. Seidler sent claimant a letter

that his Family and Medical Leave Act (FMLA) leave would be exhausted on August 1, 2015 and the employer needed a new certificate of health care provider by August 2, 2015. On July 27, 2015, claimant sent a new certificate of health care provider to the employer.

On August 6, 2015, Ms. Seidler sent a certified letter to claimant that his Family and Medical Leave Act (FMLA) leave was exhausted and he was on an approved non-FMLA leave. Ms. Seidler also requested a new certificate of health care provider by August 18, 2015. On August 18, 2015, Ms. Seidler mailed a letter to claimant extending the deadline for a new certificate of health care provider to August 28, 2015. On August 24, 2015, the employer received a return to work authorization from claimant's ARNP. Claimant could return to work on September 1, 2015 with restrictions (unable to have a CDL, cannot work beyond eight hours a day, no climbing, lifting restrictions) with follow-up appoints on September 14, 2015 and October 21, 2015.

On August 25, 2015, the employer mailed a list of open positions to claimant but because of his restrictions he did not qualify for any of the positions. The employer also requested a new certificate of health care provider within seven days after his September 14, 2015. Claimant signed for the letter on September 9, 2015. Claimant went to his appointment on September 14, 2015 to see a neurologist. The neurologist sent the results to claimant's ARNP. Claimant had a follow-up appointment with his ARNP on September 16, 2015 to go over the results from the September 14, 2015 neurologist visit. His ARNP gave him similar work restrictions, which would have prevented him from performing some of his duties as a location manager. Claimant scanned the document from his ARNP on September 18, 2015 to e-mail to the employer. Claimant thought he e-mailed it to Ms. Seidler on September 18, 2015. Claimant did not become aware until September 30, 2015 that the employer had not received the e-mail when he realized he had not been paid for the short-term disability from the employer. On September 30, 2105, claimant contacted the employer to determine what was going on. Ms. Seidler told claimant she had not received the e-mail. Claimant then forwarded the e-mail to Ms. Seidler. Claimant was not told he was discharged. The employer did not contact the claimant after September 21, 2015, until he called on September 30, 2015. Claimant discovered he was discharged by the employer's e-mail on October 5, 2015.

Claimant received no disciplinary warning for not providing the proper paperwork by September 21, 2015. Claimant had no warnings for not providing the proper paperwork during his leave of absence. Claimant believed he was following all the employer's protocols for the leave of absence and provided any requested documentation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds claimant's version of events to be more credible than the employer's recollection of those events.

Iowa Code § 96.5-2-a provides:

> An individual shall be disqualified for benefits:
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> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
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> 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.

Iowa Admin. Code r. 871-24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
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> 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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless

indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). 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. Iowa Admin. Code r. 871-24.32(7); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)…accurately states the law."

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

From the time claimant was placed on medical leave until September 21, 2015, claimant had followed the employer's protocols and requests for medical documentation by their deadlines (one deadline was extended). There is no dispute that claimant was aware he was to file a report from his ARNP within seven days after his September 14, 2015 appointment. Claimant scanned the report from his ARNP on September 18, 2015 and he thought he mailed it on that same day. However, the employer did not receive the e-mail. The employer made no attempt to contact claimant after September 14, 2015 regarding this report. Claimant initiated the next contact on September 30, 2015 because he had not received his disability payment. When claimant contacted Ms. Seidler on September 30, 2015, he discovered that his September 18, 2015 e-mail had not been received by the employer. Claimant then immediately sent an e-mail with his ARNP's September 16, 2015 report to the employer. The employer did not warn or discipline claimant at this time for failing to provide the report by September 21, 2015. It is further undisputed that claimant was not discharged at this time. Claimant was not notified by the employer he was discharged until October 5, 2015, when he received an e-mail from the employer.

Claimant did not willfully fail to provide the requested report from his ARNP by the September 21, 2015 deadline. Claimant mistakenly thought he e-mailed the employer on September 18, 2015 and did not know anything was wrong until September 30, 2015 and when he discovered the error, he immediately corrected his mistake. The conduct for which claimant was discharged was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Furthermore, the employer has failed to establish any wrongful intent by claimant when he mistakenly did not e-mailing the report by September 21, 2015. Benefits are allowed.

DECISION:

The October 23, 2015 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

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