IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JEFF MASON
Claimant

MATT FURNITURE INC
Employer

APPEAL NO. 07A-UI-03748-B

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/11/07 R: 01
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Matt Furniture, Inc. (employer) appealed an unemployment insurance decision dated April 5, 2007, reference 01, which held that Jeff Mason (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Spencer, Iowa on May 7, 2007. The claimant participated in the hearing. The employer participated through owners Sharon Stadsvold and Gary Altenhofen. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time delivery driver from January 4, 2006 through March 14, 2007, when he was discharged for being a no-call/no-show for three consecutive work days. He had previous issues with attendance but had always called the employer when he was going to be tardy or absent. The employer did counsel him about his attendance on January 18, 2007. However, his discharge was solely due to the three days of no-call/no-show.

The claimant had depression and was in his second month of treatment. On Monday, March 12, 2007, he felt like he was going to have a nervous breakdown, so he did not go to work. He also has a problem with alcoholism and began drinking alcohol that morning. When his wife came home for lunch, she took him to the hospital, where he was admitted for treatment. His wife called their pastor, who spoke with the claimant and advised the claimant he would go speak with the claimant's employer. The pastor did speak with the employer on Monday afternoon and advised the employer it was uncertain how long the claimant would be in treatment. The employer assumed the claimant was not going to be able to work for a period of time. The claimant was dismissed from the hospital on March 14, 2007 and called the employer

at home that evening to inquire as to the status of his job. The employer told him he was discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged for three days of no-call/no-show. Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. Higgins v. Iowa Department of

Job Service, 350 N.W.2d 187 (Iowa 1984). 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). The claimant was a no-call/no-show for three consecutive days due to depression and alcoholism. Although he did not contact the employer, the claimant's pastor contacted the employer on Monday afternoon. The employer was aware the claimant was in the hospital from that point on and although the claimant did not actually report his absences, the employer had notice. Consequently, the last two absences can be considered excused due to properly reported illness and only the first absence is unexcused. A single unexcused absence does not constitute excessive unexcused absenteeism. Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989). While the employer had sufficient cause to discharge the claimant, work connected misconduct as defined by the unemployment insurance law has not been established and benefits are allowed.

DECISION:

The unemployment insurance decision dated April 5, 2007, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw