IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

CORRIE M HARRIS Claimant **MANATT'S INC** Employer	**APPEAL 21R-UI-01002-DZ-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/14/20** **Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Corrie M. Harris, the claimant/appellant, filed an appeal from the September 11, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was scheduled for November 9, 2020. Mr. Harris did not respond to the hearing notice and answer at the telephone number he provided. No hearing was held. Mr. Harris' appeal was dismissed in Appeal 20A-UI-11495-DB-T.

Mr. Harris appealed to the Employment Appeal Board (EAB). The EAB remanded Mr. Harris' case back to an administrative law judge in the Iowa Workforce Development, Appeals Section. The parties were properly notified of the new hearing date and time. A telephone hearing was held on February 15, 2021. Mr. Harris participated and testified. The employer participated through Jamie Edlen, human resources manager. Claimant's Exhibit A and Employer's Exhibit 1 were admitted into evidence. Official notice was taken of the administrative record.

ISSUES:

Was Mr. Harris' separation from employment a discharge for misconduct or did he voluntarily quit without good cause attributable to the employer?

Is Mr. Harris able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Harris began working for the employer on July 14, 2014. Mr. Harris has scheduled foot surgery. He discussed taking time off of work with his employer.

On November 25, 2019, the employer sent Mr. Harris a letter at 1129 Grand Ave, Davenport, IA 52803. Employer's Exhibit 1. The letter informed Mr. Harris that he and his doctor needed to complete documents in order for him to receive short-term disability benefits. The letter also

informed Mr. Harris that he could receive short-term disability payments for a maximum of 26 weeks.

Mr. Harris submitted his application for short-term disability benefits on December 6, 2019. Mr. Harris application was approved and he began short-term disability on December 13, 2019. Mr. Harris had surgery at the end of December 2019.

On February 17, Diane Kilmer, from the employer's human resources office, sent Mr. Harris an email message telling him that the employer had received his updated paperwork.

Mr. Harris had a second surgery in March 2020 due to complications from the first surgery. On March 5, 2020, the employer sent Mr. Harris a second letter at 1129 Grand Ave, Davenport, IA 52803. Employer's Exhibit 1. The letter informed Mr. Harris that his 26 weeks of short-term disability would end on June 11, 2020. The letter also told Mr. Harris that if he remained unable to work after June 11, 2020 his employment would be terminated as of June 30, 2020.

On April 24, 2020, the employer sent Mr. Harris a third letter at 1129 Grand Ave, Davenport, IA 52803. Employer's Exhibit 1. The letter was labeled "2nd Notice." The letter informed Mr. Harris that his 26 weeks of short-term disability would end on June 11, 2020. The letter also told Mr. Harris that if he remained unable to work after June 11, 2020 his employment would be terminated as of June 30, 2020. Mr. Harris did not return to work on June 12, 2020 or any time after this date.

Mr. Harris's doctor released him to return to work on June 16, 2020. Mr. Harris did not return to work because had heard from some of his co-workers that the employer had already laid him off. Mr. Harris did not provide his doctor's note to the employer on, or around, June 16, 2020.

On June 17, 2020, the employer sent Mr. Harris a fourth letter at 1129 Grand Ave, Davenport, IA 52803. Employer's Exhibit 1. The letter was labeled that informed Mr. Harris that his 26 weeks of short-term disability ended on June 11, 2020 and since he was unable to return to work on June 12, 2020, his employment was terminated.

Mr. Harris received the June 17, 2020 termination letter form the employer and one of the other letters from the employer. Mr. Harris denies receiving the other two letters from the employer. During the time that he was on leave, Mr. Harris did not look at his mail often.

On September 14, 2020, Mr. Harris sent an email message to Graham Cunninghame, his former manager. Claimant's Exhibit A. The subject line of the email message said "I was off work truthful with permission. I did not was not apart of a three day no call no show because diane new brad new and you also." Attached to the email message was a July 14, 2020 doctor's note. The doctor's note provided that Mr. Harris was released back to work without restrictions on June 16, 2020. This was the first time Mr. Harris had provided the July 14, 2020 doctor's note to the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Harris was discharged from employment due to job-related 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.
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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 Department of Job Service*, 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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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).

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as 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 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. *Id.*. 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 believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id*.

The findings of fact show how the administrative law has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that Mr. Harris was warned two times – in the employer's March 5, 2020 and April 24, 2020 letters to Mr. Harris – that he had to return to work on June 12, 2020 or his employment would be terminated. Despite these warnings, Mr. Harris did not return to work on June 12, 2020 and he provided no doctor's note explaining why he could not return to work on June 12, 2020. Mr. Harris testified that he did not check his mail often while he was on leave and that he received two of the four letters the employer sent him. All four letters were mailed to Mr. Harris at the same address. Mr. Harris not seeing the employer's letter because he did not look at his mail often is not the fault of the employer.

Furthermore, Mr. Harris' doctor released him to return to work on June 16, 2020. Despite this release, Mr. Harris did not return to work on June 16, 2020 because he heard from co-workers that his employment had already ended. Even though the employer warned Mr. Harris that his employment would end if he did not return to work on June 12, 2020, the employer had not actually terminated his employment on June 12, 2020. That means Mr. Harris had a grace period from June 12, 2020 through June 17, 2020, the date the employer actually terminated his employment. During this grace period, Mr. Harris did not return to work or provide a doctor's note explaining why he could not return to work. This is disqualifying misconduct. Benefits are denied.

Because Mr. Harris' separation from employment is disqualifying, the issues of ability and availability are moot.

DECISION:

The September 11, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Daniel Zeno
Administrative Law Judge
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February 26, 2021
Decision Dated and Mailed

dz/scn