**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**ZACHARY W HEDGECOCK**
Claimant

**QWEST CORP**
Employer

**APPEAL NO. 09A-UI-01957-SWT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 12/14/08**
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated January 30, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 27, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with a representative, Selena Edmondson. Mary Otu participated in the hearing on behalf of the employer with witnesses, Debra Thompson and Shelly Erskin. Exhibits One, Two, and Three were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for a current act of work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a sales and service representative from March 1, 2004, to December 11, 2008. Debra Thompson was the claimant's supervisor.

On October 15, 2008, the claimant fabricated a doctor's statement on Iowa Health System letterhead using his work computer to provide an explanation for Family and Medical Leave Act (FMLA) documentation that the claimant asserted had been sent by Dr. Micheal Daly on September 19 certifying his need for intermittent FMLA to care for his wife. In fact, Dr. Daly had stopped working at the clinic in July 2008. The claimant faxed the document to Qwest Disability Services (QDS). The claimant had asked a coworker, Tom Clarkson, to sign the letter, but when Clarkson refused the claimant signed it himself, forging Dr. Daly's signature.

On October 16, 2008, the QDS received the letter. That same day, Clarkson told Thompson about the claimant's request that he sign the doctor's statement. Thompson reported this to QDS on October 17. Someone at QDS faxed the letter to the doctor's office and an employee replied immediately that the signature on the letter was not Dr. Daly's. Thompson was aware of this information. The claimant was allowed to continue working.

In November 2008, the questions regarding the fabricated doctor's statement were turned over to corporate investigator, Shelley Erskine. Erkskine interviewed the claimant and other

witnesses on November 14. The claimant initially asserted that he did not have the forms and the clinic faxed them in. He denied forging Daly's signature and insisted Daly wrote and signed the note. A short time after the interview, the claimant contacted Erkskine and said he wanted to change his statement. During a second interview, he said he picked up the FMLA forms from the clinic and faxed them himself. Erskine interviewed Clarkson on November 19 and he repeated what he had told Thompson. Erskine prepared and submitted her investigative report on November 19, 2008.

The claimant was allowed to continue to work after his interview and the submission of the report to management and the legal department. He continued to work while management and the legal department mulled over what they were going to do. On December 11, 2008, the employer discharged the claimant for submitting a false doctor's note.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The inconsistencies in the claimant's statements of what happened make his testimony unbelievable. I do not believe for a second that someone at the clinic emailed the claimant letterhead with the idea that he would draft his own doctor's note for someone at the clinic to sign. He fabricated and forged the doctor on October 15 and faxed it to the employer. This was misconduct. The only real question is whether it was a current act.

The unemployment insurance rules states "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." 871 IAC 24.32(8). Considering the seriousness of what the claimant did, the easy way to handle this would be to gloss over the delay in taking action in his case. An administrative law judge, however, must apply the law as written and may not rewrite the law to achieve a desired outcome.

The claimant's supervisor knew on October 16 that the claimant had attempted to get a coworker to sign a doctor's statement. QDS knew on October 17 that the statement submitted by the claimant contained a forged doctor's signature. Despite this knowledge, the employer allowed the claimant to continue working. He was not interviewed until November 14. The investigator completed her report on November 19, but no action was taken until 22 days later. The only explanation provided by Thompson was that her supervisor and the legal department needed to "mull over" what action to take.

The court in *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988) held that in order to determine whether conduct prompting the discharged constituted a "current act," the date on which the conduct came to the employer's attention and the date on which the employer notified the claimant that said conduct subjected the claimant to possible termination must be considered to determine if the termination is disqualifying. Any delay in timing from the final act to the actual termination must have a reasonable basis.

Applying this standard, the employer has failed to meet its burden of showing the claimant was discharged for a current act of misconduct. No reasonable basis has been shown for the delay in from the final act to the actual termination. I do not condone the claimant's conduct and would have disqualified him if the employer had taken prompt action.

**DECISION:**

The unemployment insurance decision dated January 30, 2009, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs