

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM L EDDINGER
Claimant

APPEAL NO. 17A-UI-09826-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONIFER REVENUE CYCLE SOLUTIONS
Employer

OC: 08/20/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

William Eddinger (claimant) appealed a representative's September 20, 2017, decision (reference 01), that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Conifer Revenue Cycle Solutions (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 11, 2017. The claimant was represented by Thomas Ravelly, Attorney at Law, and participated personally. The claimant's mother, Pamela Cline, participated on behalf of the claimant. The employer participated by Robert Erny, Human Resources Manager. The claimant offered and Exhibit A 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 March 18, 2008, as a full-time representative document imaging senior. The claimant signed for receipt of the employer's handbook. At the time he was hired, the claimant told the employer he had epilepsy. At times, he had seizures at work.

The claimant's seizures were under control for the most part but at some point, the seizures increased in frequency. He sought medical help and his physicians placed him on medications that caused him to be sluggish. The claimant's medical team was working to find the right medications to help him. The claimant was absent from work on November 11, 2016, February 23, April 13, 17, June 7, 22, and 26, 2017. He was tardy for work on June 20, 21, July 22, 26, and August 10, 2017. The claimant told the employer the reasons for the absences were due to his seizures.

The employer issued the claimant written warnings for attendance on June 23 and 28, 2017. All of the claimant's absences were due to his medical condition and reported as soon as he was

conscious and his condition would allow. The employer notified the claimant that further infractions could result in termination from employment.

On August 17, 2017, the claimant was tardy for work after experiencing a seizure. He notified the employer as soon as he was able. The employer terminated the claimant on August 17, 2017.

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 reported by the claimant as soon as he was able.

The employer had an obligation to provide the claimant with reasonable accommodations that would allow him to continue in the work. See *Sierra v. Employment Appeal Board*, 508 N.W. 2d 719 (Iowa 1993). The employer knew of the claimant's medical situation and the reasons for his absences. The employer did not offer the claimant any accommodations to the attendance policy. The claimant's final absence does not amount to job misconduct because the claimant could not properly report his absence or arrive on time due to mental incapacity. 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 September 20, 2017, decision (reference 01) 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/scn