

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROGELIO PEDRAZA
Claimant

APPEAL NO: 18A-UI-03634-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GMT CORPORATION
Employer

**OC: 02/25/18
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

GMT Corporation filed a timely appeal from a decision of a representative dated March 13, 2018, (reference 01) which held claimant eligible to receive unemployment insurance benefits, finding that the claimant was dismissed from work on December 5, 2017, for excessive absences but finding that the absences were due to illness and were properly reported. After due notice was provided, a telephone hearing was scheduled for and held on April 13, 2018. Claimant participated. Employer participated by Ms. Jamie Cramer, Human Resource Manager.

ISSUE:

Whether the claimant was discharged for work connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Rogelio Pedraza was employed by GMT Corporation from January 23, 2017 until December 5, 2017, when he was discharged from employment. Mr. Pedraza was employed as a full-time machinist and was paid by the hour.

Mr. Pedraza was sent a discharge letter by GMT Corporation on December 5, 2017, based upon the employer's belief that the claimant had been authorized by his doctor to return to work on November 29, 2017, but he had failed to do so. The claimant had not called in each day as required by company policy. Later, the employer discovered that the claimant's physician had sent in a second doctor's note dated November 28, 2017, that extended Mr. Pedraza's time away from work for medical reasons until January 1, 2018.

On November 25, 2017, Mr. Pedraza had been removed from his work by Mr. Butch Kelley, a representative of the company's human resource department. Mr. Kelley had learned that the claimant was experiencing neck pain. Mr. Kelley specifically instructed the claimant to leave work to obtain medical treatment, and not return to work until the treatment was completed and the claimant was able to work pain free.

The claimant followed Mr. Kelley's instructions and visited his personal physician. Mr. Pedraza was referred to a neuro surgeon for treatment. The claimant's doctor submitted a statement to GMT Corporation saying it was his belief that Mr. Pedraza could return to work effective November 29, 2017.

The neurosurgeon that the claimant first visited was unwilling to perform the required surgery on the claimant and Mr. Pedraza began a search for a surgeon who would perform the medical procedure. The claimant contacted a number of surgeons but by November 28, 2017 he had not yet found a surgeon willing to perform the procedure. Because the claimant had not secured the expected surgery within the timeframe that had been expected, Dr. Matt Kelley, the claimant's physician faxed a second medical statement to the company specifically extending the claimant's authorized time away from work for medical reasons until January 1, 2018. The most recent doctor's statement was faxed to the company on November 28, 2017, and representatives of the company had acknowledged to Mr. Pedraza that the most recent doctor's statement had been received by the company. Because the time period that the claimant had been authorized to be away from work for medical reasons had been extended by his physician and the company had acknowledged receipt of the extension, Mr. Pedraza reasonably concluded that any additional absences were authorized and excused and that he would not be required to call in each day.

Due to staffing changes in the company's human resource department, current employees were unaware of the medical extension and concluded that the claimant had not reported back to work after being initially released. The company therefore sent a letter of termination dated December 5, 2017.

It is the employer's position in this matter that Mr. Pedraza was not covered by the Family Medical Leave Act (FMLA), as he had not been employed for a sufficient period of time, management concluded the company was under no obligation to keep the job position open or to continue to employ him as his position was not protected by FMLA and he continued to be absent from work.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes job connected misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

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).

The claimant is not qualified to receive unemployment insurance benefits if an employer discharges the claimant for reasons constituting work connected misconduct. Iowa Code Section 96.5(2)a. The employer has the burden of proof the claimant was discharged for work connected misconduct as defined by the Iowa Employment Insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct and culpability. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661,665 (Iowa 2000).

The Supreme Court of the State of Iowa in the case of *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984), held that excessive, unexcused absenteeism is a form of job misconduct. The Court held that the absences must both be excessive and unexcused and that the concept includes tardiness, leaving early, etc. The Court further held, however, that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer. The court in *Roberts v. Iowa Department of Job Service*, 356 N.W.2d 218 (Iowa 1984). Found that unreported absences due to mental incapacity or because of the nature of the reason for the absence are considered excused.

In the case at hand, the claimant was removed from his job position by the employer and instructed that he could not return until he obtained medical treatment and was fully released to return to work. Based upon the directive that had been given to him by the company, Mr. Pedraza went to his personal doctor and began contacting perspective neurosurgeons to perform neck surgery. Although the claimant had been removed from his job by the employer, Mr. Pedraza, through his doctor, nevertheless provided medical documentation to the company verifying that the claimant was under his doctor's care and medically unable to return to work until November 29, 2017. Prior to the expiration of that doctor's note, the claimant's physician faxed to the company a second note extending the period that the claimant was not medically released to return to work until January 1, 2018. Mr. Pedraza personally verified with the company's human resource department that the extension had been received by the human resource department. Because notice had been specifically given to the employer by his doctor that he was not to return to work until January 1, 2018, the claimant reasonably concluded that because of the doctor's second note he was not required to call in each day. Although the

claimant continued to be covered by the second doctor's statement, authorizing him to be away from work for medical reasons, the company nevertheless chose to discharge the claimant.

The question in this case is not whether the employer had a right to discharge Mr. Pedraza for this reason but whether the claimant's discharge from employment took place under disqualifying conditions as defined by the Iowa Employment Insurance law. Because the claimant's job was not protected under the Family and Medical Leave Act (FMLA) the employer was not prohibited from discharging the claimant under the provisions of that federal act, however, if the company fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the claimant had been authorized to be away from work for medical reasons until January 1, 2018, and the employer had notice of the medical extension authorization, the employer has not met the burden of proof to establish the claimant acted deliberately or negligently in disregard of the company's interests or standards of behavior sufficient to warrant the denial of unemployment insurance benefits. The claimant did not engage in work misconduct. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account is chargeable for benefits paid.

DECISION:

The representative decision dated March 13, 2018, reference 01 is affirmed. Claimant was dismissed from work under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn