IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANTHONY K BACCAM
Claimant

ROCKWELL COLLINS INC
Employer

APPEAL NO. 12A-UI-07956-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/27/12
Claimant: Appellant (2/R)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Anthony Baccam (claimant) appealed a representative's July 2, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Rockwell Collins (employer). The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate in the hearing.

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 having considered all of the evidence in the record, finds that: The claimant was hired on December 4, 2006, as a full-time operator. The claimant signed for receipt of the employer's handbook. The handbook indicates that an employee who is absent for more than three days due to medical issues must provide a doctor's note before the start of the fourth day of absence. Employees must report an absence prior to the start of the shift. The claimant did not receive any warnings during his employment.

On May 22, 23, and 24, and 25, 2012, the claimant properly reported his absence due to an eye infection. He saw his physician on May 22 and 23, 2012. His physician provided a note that indicated he could not work on May 22, 23, and 24, 2012. He was to see the physician again on May 29, 2012. The claimant was unable to drive and could not drive the doctor's note to the employer. After the start of his shift on May 25, 2012, the claimant was able to arrange to have the doctor's note delivered to the employer. On May 25, 2012, the employer called the claimant and told him he was terminated for failure to provide a doctor's note to the employer prior to the start of his shift on May 25, 2012.

He filed for unemployment insurance benefits with an effective date of May 27, 2012. The claimant continued to see his physician twice per week through June 7, 2012. As of June 4, 2012, the physician told the claimant he could return to work without restrictions. The claimant continues to see his physician regarding his eye infection.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit work.

Iowa Code section 96.5-1 provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant had no intention of quitting work. The separation must be considered an involuntary termination.

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.
>
> 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.

871 IAC 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). The employer must establish not only misconduct, but that there was a final incident of misconduct that precipitated the discharge. The last incident of absence was a properly reported illness that occurred on May 25, 2012. The claimant's absence does not amount to job misconduct, because it was properly reported.

Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer has failed to provide any evidence of willful and deliberate misconduct that would be a final incident leading to the discharge. The claimant was discharged, but there was no misconduct.

The issue of whether the claimant is able and available for work is remanded for determination.

DECISION:

The representative's July 2, 2012 decision (reference 01) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw