

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PRIMERO ZANDERS

Claimant

APPEAL NO: 13A-UI-03349-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FERGUSON ENTERPRISES INC

Employer

OC: 07/01/12

Claimant: Respondent (2/R)

Iowa Code § 96.5-2-a - Discharge for Misconduct

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Ferguson Enterprises, Inc. (employer) appealed an unemployment insurance decision dated March 11, 2013, reference 03, which held that Primero Zanders (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 18, 2013. The claimant participated in the hearing with his wife, Laura Zanders. The employer participated through Debra Dange, Human Resources Administrator. Employer's Exhibits One through Seven and Claimant's Exhibit A and B were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a wholesale plumbing supply and distribution center. The claimant was previously employed from November 28, 2011 through February 23, 2012 when he was unable to report to work due to child care issues. He was rehired on April 2, 2012 as a full-time order/picker/operator and reach truck operator. The claimant went on a non-work-related medical leave of absence from June 6, 2012 through October 2, 2012. He did not qualify for leave under the Family Medical Leave Act but was still required to provide and did provide medical certification for his leave of absence. The claimant returned to work on a part-time basis.

The claimant worked less than two months and called in sick on November 29 and 30; and December 3, 4, and 5, 2012. The employer suggested the claimant go on a medical leave of absence since he had missed more than three consecutive days of employment which put his job in jeopardy. Human Resources Administrator Deb Dange spoke with the claimant on

December 5, 2012 and she filled out the leave of absence paperwork. She advised the claimant he needed to provide medical documentation and the employer sent the claimant a letter dated December 6, 2012 with the medical certification which needed to be completed. The employer's leave of absence policy requires associates to execute all appropriate paperwork and to submit all supporting documentation needed to process the request. Associates are required to provide sufficient medical information from the treating physician and medical certification must be returned within 15 days from the date of the request. Associates are expected to provide to their supervisor regular updates regarding their status. Failure of the associate to comply with the leave of absence policy requirements may result in a denial of the leave request, which in turn may result in a separation of employment.

The letter sent to the claimant on December 6, 2012 required the claimant to provide his treating physician's certification of health care to the employer by December 27, 2012. In the middle of December 2012, the claimant's wife provided to the employer two medical excuses from the claimant's local physician Nagarathnamma Nadipuram, M.D. The first medical note excused the claimant from work from November 29, 2012 through November 30, 2012 and released him to return to work on December 3, 2012. The second note excused him from work from December 3 and 4, 2012 and released him to return to work on December 5, 2012. Ms. Zanders gave these medical notes to Ms. Damge and she advised Ms. Zanders that further documentation was needed. Ms. Damge went out to the parking lot and spoke with the claimant who was waiting in his car.

No further medical information was provided and the employer sent the claimant another letter on January 3, 2013. A duplicate copy of the medical certification paperwork was included with the letter and the claimant was advised he needed to turn in the completed Certification of Health Care no later than January 11, 2013. The claimant failed to respond to the January 3, 2013 letter and had not provided a completed Certification of Health Care by the due date. Ms. Damge had not heard from the claimant since the middle of December 2012 and she was directed to send the claimant a letter terminating his employment. A letter was sent to him on January 15, 2013 which advised the claimant his employment was terminated effective January 18, 2013 due to his failure to provide the requested documentation. The employer noted that, "Being absent with no documentation and no communication with management is not acceptable."

On January 18, 2013 at 2:55 p.m., Dr. Johana Itereno from Mayo Clinic faxed the employer an activity/work status report. The document confirms the claimant first saw her on December 12, 2012 and again on January 8, 2013. Dr. Itereno indicated the claimant was also going to be treated in a two-week program from January 1, 2013 through February 1, 2013. The report indicates the claimant is unable to work through February 1, 2013 but no beginning date was provided. The claimant spoke with Ms. Damge on or shortly before this date and she advised him it was too late but suggested he speak with Leave Administrator Nicole Turner.

On the day of the hearing, the claimant provided a short term disability claim packet which Dr. Nadipuram completed on January 29, 2013. In this attending physician's statement, the doctor indicates the medical condition is work-related even though that had not been claimed previously. Dr. Nadipuram certified that she first treated the claimant for this condition on July 11, 2012 and that he was last seen on November 29, 2012, which is the date his disability began. She reported that his last office visit was on November 29, 2012 and that he would be seen again on February 4, 2013. Dr. Nadipuram reported the claimant was released to return to work without restrictions on February 4, 2013. The claimant also introduced a letter from Dr. Nadipuram dated April 18, 2013 which states that the claimant has been under her care from

November 28, 2012 through December 5, 2012 but was unable to work from that period of time until February 4, 2013.

The claimant filed a claim for unemployment insurance benefits effective July 1, 2012 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on January 18, 2013 for failure to maintain contact and failure to provide the required medical certification as required by policy to support his leave of absence. He contends that he asked his medical providers to provide the information and that he is not responsible for the medical providers not doing what they are supposed to do or what they said they would do. The claimant is correct in that he is not responsible for what his medical

providers did not do but it was his responsibility to ensure that the employer received the required documentation in order to protect his job and he did not do that.

The claimant's failure to provide medical documentation of the continuing need to be away from work constitutes a substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. He knew what was required and was given ample notice that failure to provide medical certification would result in a loss of leave eligibility, which would result in a termination of employment. The claimant's substantial disregard of the employer's standards constitutes disqualifying misconduct in connection with his employment. Accordingly, benefits are denied.

Although it is not necessary to resolve the medical information since the majority of it was not provided to the employer prior to the termination, it is important to note that the medical excuses provided by Dr. Nadipuram are inconsistent. The first medical excuse dated November 29, 2012 releases the claimant to return to work on December 3, 2012. In the medical excuse dated December 4, 2012, she reported the claimant was under her care on December 3 and 4 and that the claimant was released to return to work with no restrictions on December 5, 2012. The claimant disputed this fact but the document speaks for itself. The claimant introduced an attending physician's statement completed on January 29, 2013 in which Dr. Nadipuram certifies the claimant's disability started on November 29, 2012 but she also reports this was the date of his last office visit. And finally, Dr. Nadipuram's April 18, 2013 letter reports the claimant was under her care from November 28, 2012, which is the first mention of treatment on this date. She also indicates in this letter that the claimant was unable to work from November 28, 2012 through February 4, 2013.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated March 11, 2013, reference 03, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for

insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/tll