IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

GLENN R SINGLETON
Claimant

CHARLES DRAKE & ASSOCIATES
Employer

APPEAL NO: 14A-UI-12764-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/16/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Glenn R. Singleton (claimant) appealed a representative's December 9, 2014 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Charles Drake & Associates (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 8, 2015. The claimant participated in the hearing. Brenda Madison appeared on the employer's behalf. 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began taking assignments with the employer in about December 2012. He continued to work semi-regularly for the employer on different assignments since that time. While he did have a final one-day assignment without incident on December 4, 2014, the employer challenges his eligibility due to the circumstances of a separation from an assignment which occurred on November 13, 2014.

That assignment began in about June of 2014, working full time performing general labor for the employer's business client, doing both event set up and warehouse work. His last day actually worked on the assignment was November 7, 2014. The business client and the employer discharged him from the assignment on November 12, 2014. The reason asserted for the discharge was excessive absenteeism.

On Monday, November 10 the claimant had called the employer and reported that he would be absent because he was sick; he understood that the employer would notify the business client, which the employer did. On Tuesday, November 11 and Wednesday, November 12 he was a no-call/no-show. He mistakenly believed that after calling in sick on November 10 he would only need to inform the employer when he was ready and able to return to the assignment. When the claimant did not report for work or contact the employer or the business client on November 11 and November 12 because he was still sick, the business client informed the employer that it was ending the assignment, and the employer then so informed the claimant.

The claimant may have missed some isolated days of work in the past, but there is no record he was advised either formally or informally that he was missing enough work that he was placing his job in jeopardy, or that if he failed to call to report an absence he would be dismissed.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive unexcused absenteeism can constitute misconduct. Rule 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Rule 871 IAC 24.32(7); *Cosper*, supra; *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007). In order to establish the necessary element of intent, the final incident must have occurred despite the claimant's

knowledge that the occurrence could result in the loss of his job. *Cosper*, supra; *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984). Even though the claimant's final days of absence on November 11 and November 12 were not properly reported, the claimant had not previously been warned that future absences could result in termination. *Higgins*, supra. The employer has failed to meet its burden to establish misconduct. *Cosper*, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's December 9, 2014 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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