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

KORI A MURPHY
Claimant

APPEAL NO. 18A-UI-05288-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS MANUFACTURING COMPANY
Employer

**OC: 04/08/18
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kori Murphy (claimant) appealed a representative's May 1, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Sears Manufacturing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 25, 2018. The claimant participated personally. The employer was represented by Robin Moore, Hearings Representative, and participated by Trisha Taylor, Human Resources Manager. The employer offered and Exhibit 1 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 October 22, 2013, as a full-time assembler. He signed for receipt of the employer's handbook on October 22, 2013. The attendance policy may have changed after the claimant received it. Employees were terminated after accumulating ten attendance points. An employee could earn one point back if he did not have any absences in a three month period.

The claimant left early on December 9, 2014, October 12, 2015, July 29, August 2, 2016. He earned a total of two points for all those absences. He was absent on January 7, June 23, August 25, 2015, February 23, October 31, 2016, and May 26, 2017. He earned a point for each of those absences.

There were at least three months between January 7, 2015 and June 23, 2015, October 12, 2015, February 23, 2016 and February 24, 2016, and July 29, 2016. There were at least six months between October 31, 2016, and May 26, 2017. There were at least nine months between May 26, 2017, and March 15, 2018. The employer deducted attendance points on January 12, 2016, July 16, 2016, and April 24, 2017, (three points) rather than eight points.

On March 15 and 16, 2018, the claimant properly reported his absences due to back pain. There was confusion about whether the claimant had family medical leave. The claimant returned to work after his absences and continued working through April 10, 2018. On April 10, 2018, the employer terminated the claimant for absenteeism.

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). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on March 16, 2018. It was a properly reported medical issue. The claimant's absence does not amount to job misconduct because it was properly reported. The claimant was not discharged until April 10, 2018. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's May 1, 2018, 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.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs