IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TODD A CASTER
Claimant

TMG MANAGEMENT LLC
Employer

APPEAL NO. 10A-UI-04050-H2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01-31-10
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 2, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 29, 2010. The claimant did participate. The employer did participate through, Jackie Klacik, Regional Property Manager. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a maintenance technician full time beginning in September, 2007 through February 1, 2010 when he was discharged.

The claimant called in sick to work on January 25 and January 26. He properly reported his absence. During the overnight hours between January 26 and January 27 he went into work to fix a tenant's furnace. The claimant reported to work on January 27 and began to work at the tasks assigned by Ms. Klacik. Shortly after arriving to work he called Ms. Klacik and told her that he was going to see his doctor as he had been called by the doctor's office and they could fit him in that day instead of having him wait until Friday. The claimant was still not feeling well and wanted to be seen by his physician as soon as possible. The claimant saw Scott Fackrell, D.O. for diagnosis and treatment on January 27. Dr. Fackrell took the claimant off work through January 29. Dr. Fackrell, a licensed physician, determined that the claimant was too ill to work. On February 1, 2010, Dr. Fackrell's office faxed the employer a doctor's note removing the claimant from work from January 27, 2010 through January 29, 2010. The claimant was discharged the same day that the employer received the physician's note indicating he needed to be off work through January 29, 2010. The claimant was discharged because Ms. Klacik did not want the claimant to go to the doctor on January 27; she wanted him to wait until Friday to go to the doctor. Because the claimant disobeyed Ms. Klacik's instruction that he wait to go to the doctor until Friday, January 29, he was discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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 of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, 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 misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden

of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation.
Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. IDJS, 367 N.W.2d 300 (Iowa App. 1985).

The claimant refused to continue working because he felt ill and wanted to seek medical treatment. Ms. Klacik's assertion that he was pulling a "stunt" in order to get out of work is not supported by the medical evidence of Dr. Fackrell. Dr. Fackrell took the claimant off work, and prescribed medication after determining that the claimant was too ill to continue working. Later when the employer knew that Dr. Fackrell had taken the claimant off work, they still chose to fire him, despite that the fact that he was too ill to work. Under such circumstances the administrative law judge concludes that Ms. Klacik's request that the claimant not seek medical treatment, but continue working was unreasonable and the claimant was justified in refusing to continue working. Seeking medical care when ill is not misconduct. The employer has failed to establish disqualifying misconduct and benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The March 2, 2010 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

_____
Teresa K. Hillary
Administrative Law Judge

_____
Decision Dated and Mailed

tkh/pjs