IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

LEROY M WILLIAMS
Claimant

CNH AMERICA LLC
Employer

APPEAL NO. 15A-UI-04937-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/04/15
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Leroy Williams (claimant) appealed a representative's April 22, 2015, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with CNH America (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 3, 2015. The claimant was represented by Mike Edwards, Chairman of United Auto Workers Local 807 Bargaining Unit, and participated personally. The employer participated by Jill Dunlop, Labor Relations/Human Resources Person. The employer offered and Exhibit One 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 May 27, 2014, as a full-time material specialist. The claimant signed for receipt of the employer's handbook and attendance policy on May 27, 2014. The attendance policy states that an employee will be terminated if he has eight attendance occurrences.

The claimant properly reported illness on September 2, 16, 17, October 9, 10, and 22, 2014. The employer issued the claimant a written warning on October 23, 2014, for attendance. The claimant properly reported he was sick on December 2 and 3, 2014. On December 8, 2014, the employer issued the claimant a written warning for attendance. On February 2, 3,4, 5, and 6, 2015, the claimant properly reported his absence due to illness. On February 10, 2015, the employer issued the claimant a written warning and three-day suspension for attendance. At that time the claimant had six attendance points. The employer notified the claimant in each warning that further infractions could result in termination from employment.

On April 6, 2015, the claimant overslept because he was ill and taking medication. He arrived at work late without notifying the employer in advance. The employer assessed the claimant one attendance point. Later that day the claimant told his supervisor he was ill and had to leave work early. The employer gave the claimant one-half attendance point. On April 7, 2015, the claimant overslept due to illness and taking medication. He again arrived at work late without notifying the employer. The employer gave the claimant another attendance point. On April 8, 2015, the employer terminated the claimant for having over eight attendance points.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

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).

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). All of the claimant's absences were properly reported and

due to a medical issue except for the two incidents of tardiness on April 6 and 7, 2015. Two incidents in ten months are not excessive. The claimant's absences do not amount to job misconduct. The employer has failed to provide sufficient evidence of willful and deliberate misconduct. The claimant was discharged but there was no misconduct.

DECISION:

The representative's April 22, 2015, decision (reference 02) is reversed. The employer has not met its 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/pjs