IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

AUSTIN J BETTS
Claimant

SAFELITE SOLUTIONS LLC
Employer

APPEAL NO. 18A-UI-04494-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/25/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Safelite Solutions, LLC (employer) appealed a representative's April 9, 2018, decision (reference 01) that concluded Austin Betts (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 4, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer was represented by Jorge Morejon, Hearings Representative, and participated by Annette Kohl, Operations Manager, and Diane Hollenbeck, Job Coach. Exhibit D-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 August 21, 2017, as a part-time customer service representative. He signed for receipt of the employer's policies on August 21, 2017. One of the employer's polices in a supplemental handbook dated March 2018, stated, "Absences of eight (8) or more consecutive calendar days will require an approved leave of absence. If a leave of absence is not approved, your absences will be reviewed and you may be subject to corrective action, up to and including termination". The claimant may have signed for receipt of a similar supplemental handbook when he was hired. It is unknown whether the March 2018, language appears in the previous handbook.

On November 10, 2017, the employer issued the claimant a verbal warning for his properly reported absence on November 7, 2017. On December 26, 2017, the employer issued the claimant a written warning for his properly reported absence due to illness on December 21, 2017. On January 5, 2018, the employer issued the claimant a final written warning for his properly reported absence due to a family emergency on January 2, 2018. On February 16, 2018, the employer issued the claimant a final written warning for his properly reported absence due to illness on February 13, 2018. The employer issued the claimant a second warning for returning from break late on February 15, 2018. This warning was a verbal warning. The

employer notified the claimant each time that further infractions could result in termination from employment.

The claimant properly reported his absence from work on March 5, 6, 8, and 9, 2018. He was not scheduled to work on March 7, 2018. His wife and two-year old were sick. His wife had a respiratory infection and had problems breathing. The claimant provided a doctor's note to the employer for the two on March 5, 6, 8, and 9, 2018, but the operations manager did not see it. The claimant properly reported his absence due to illness on March 10 and 12, 2018. On March 12 or 13, 2018, the employer mailed the claimant a request for a doctor's note but there was not receipt showing the claimant received the letter. He returned to work on March 15, 2018. On or about March 15, 2018, the operations manager told the claimant he was terminated for not providing a doctor's note showing the claimant was sick on March 5, 6, 8, 9, 10 and 12, 2018.

The claimant filed for unemployment insurance benefits with an effective date of March 25, 2018. The employer provided the name and number of Stephanie Festog as the person who would participate in the fact-finding interview on April 6, 2018. The fact finder called Ms. Festog but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided some documents for the fact finding interview. The employer did not identify the dates or submit the specific rule or policy that the claimant violated which caused the separation.

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).

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

An employer has a right to expect employees to follow instructions in the performance of the job. The employer terminated the claimant for failure to provide a doctor's note to the employer. It points to the supplemental handbook's section on absences of eight or more consecutive days. This section does not mention anything about the employee providing a doctor's note. It does state that the employee must obtain a leave of absence. The employer's policies do not provide information about the approval process for obtaining a leave of absence and the employer did not know the process. The employer builds it termination on a document it is not sure the claimant received. It relies on a section of the document that does not have any language about doctor's notes, or language stating the absences have to be for the employee only. The employer does not have any information on the approval process for a leave of absence. The claimant followed the instructions and the employer terminated him.

The claimant's fact finding statement and the employer's testimony were sometimes inconsistent. The administrative law judge finds the claimant's statement to be more credible. The employer gave different information at different times during its testimony. One of the employer's variations is similar to the statement given by the claimant.

DECISION:

The representative's April 9, 2018, decision (reference 01) is affirmed. 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/scn