

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LEONARD E ZIMMERMAN
Claimant

CNH AMERICA LLC
Employer

APPEAL 15A-UI-13059-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 17, 2015, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 14, 2015. Claimant participated. Employer participated through human resources labor relations specialist, Jill Dunlop.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a welder from September 12, 2013, and was separated from employment on October 26, 2015, when he was discharged.

The employer has a three consecutive day no-call/no-show policy. Claimant received a copy of the policy when he was hired. The call-in procedure gives a specific number for employees to call and leave a message at least thirty minutes before their shift. Claimant had used the call-in line before, most recently on September 8, 2015.

On October 21, 2015, claimant was scheduled to work. Claimant did not work that day. Claimant did not work because of a mental health problem. Claimant's girlfriend tried to call the employer. Claimant's girlfriend left a message. Claimant's girlfriend did not follow the call-in procedure. Claimant's girlfriend told the employer that he was having issues. The specific issues were not stated. Claimant's girlfriend wanted to talk to the head human resources (not Ms. Dunlop). The head of human resources did not call back.

On October 22, 2015, claimant was scheduled to work. Claimant did not work that day. Claimant did not work because of a mental health problem. Claimant tried to call the employer.

Claimant left a message. Claimant did not follow the proper call-in procedure. Claimant told the employer that claimant was having issues. The specific issues were not stated. Claimant wanted to talk to the head human resources. The head of human resources did not call back.

On October 23, 2015, claimant was scheduled to work. Claimant did not work that day. Claimant did not work because of a mental health problem. Claimant did not call the employer. Claimant did not follow the proper call-in procedure. Claimant was mad that the employer did not call back.

On October 26, 2015, Ms. Dunlop told claimant he was discharged for three consecutive days of no-call/no-show.

Claimant had been on A&S (accident and sickness policy, which is short-term disability for his mental health issues, prior to October 21, 2015. The A&S was approved through human resources. Claimant had been on A&S twice during his employment; both times were prior to October 21, 2015.

Claimant was released to go back to work on October 19, 2015 by his doctor. Claimant worked October 19 and 20, 2015. Claimant told his supervisor he was having more problems, but the supervisor did not really say anything. Claimant went to a doctor on October 21, 2015 because of his mental health problem.

REASONING AND CONCLUSIONS OF LAW:

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

The first issue is whether claimant was discharged or quit his employment.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. Claimant was absent for work for three consecutive work days. However, on October 21, 2015, claimant's girlfriend left a message with the employer (head of human resources) that claimant was going to be absent and requested a call back. Then on October 22, 2015, the parties agree that claimant left a message for the same person that he was going to be absent and requested a call back. Claimant failed to contact the employer to inform it that he was going to be absent on October 23, 2015. Even though the employer may have a policy that requires its employees to use the call-in line to

report absences, it is clear that claimant made attempts to notify the employer that he was going to be absent on two of the three days the employer used to separate his employment under its no-call/no-show policy. Therefore, claimant was not a no-call/no-show for three consecutive days. Inasmuch as claimant was absent for one day without notice rather than three consecutive work days, he is not considered to have quit but was discharged.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

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, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Based on the reasoning above, claimant was discharged for one no-call/no-show that occurred on October 23, 2015. Both parties agree that claimant left a message, requesting a call back, with the head of human resources on October 22, 2015. In claimant's message, he informed the employer he was having issues and would be absent from work. The employer was well aware of claimant's prior mental health issues. In fact, claimant had just been given a release by his doctor to start back to work on October 19, 2015. When claimant reported he was having issues the same week he just returned to work, the employer was on notice claimant was still having problems. Even though claimant may not have used the call-in line as required by the employer on October 21 and 22 (he did contact the head of human resources), and claimant was a no-call/no-show on October 23, the employer did not establish any "wrongful intent" or recurrent behavior by claimant in not following the reporting policy. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The employer failed to satisfy its burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Benefits are allowed.

DECISION:

The November 17, 2015, (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/css