

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW J STILL
Claimant

APPEAL NO. 17A-UI-00956-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 01/01/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Matthew Still, the claimant, filed a timely appeal from a representative's decision dated January 24, 2017, reference 01, which denied unemployment insurance benefits, finding that he was discharged from work on December 22, 2016, for excessive unexcused absenteeism after being warned. After due notice was provided a telephone hearing was held on February 16, 2017. The claimant participated. Participating as a witness for the claimant was John R. Still, the claimant's father. The employer participated by Mr. Paul Hammel, store legal counsel, and witness Ms. Krystal Boege, Human Resource Coordinator. The Employer's Exhibits 2 and 3 were admitted into the hearing record.

ISSUE:

The issue is whether the claimant was discharged under disqualifying conditions.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Matthew Still began employment with Menard Inc. on January 20, 2016. Mr. Still was most recently employed as a full-time cashier and was paid by the hour. His immediate supervisor was Kaitlin Corbett.

The claimant was discharged after he had continued to call off work after being released to return to work with light duty restrictions on November 17, 2016. Mr. Still had called off work on approximately 26 occasions and had failed to provide any medical documentation supporting his need to be absent. Company policy requires employees who have been absent for 14 or more consecutive days to provide medical documentation supporting their need to be absent. The claimant was given a final opportunity to provide the documentation and was discharged when he did not provide documentation and continued to call off work.

In October 2016, Mr. Still had injured his left foot at work. On November 17, 2016, the claimant was examined by a physician Iowa Ortho. That office supplied a patient status report to Menard Inc. restricting Mr. Still to a modified of a sedentary nature, to wear a boot, and to elevate and ice his foot when needed. Based upon the medical statement provided by Iowa Ortho, the employer modified Mr. Still's job duties and provided a chair for the claimant to sit on while he worked. The employer was willing to provide further accommodations if request.

Although released to return to modified work effective November 17, 2016, Mr. Still returned to work only on December 1 and December 20, 2016. On all other scheduled work days, the claimant called off work because he was experiencing pain and/or swelling. Mr. Still did not request any modification or additional accommodations by the employer. As time progressed, the employer became increasingly concerned about the claimant's attendance because he had been released to return to work and was not doing so. Mr. Still was asked to provide some medical documentation supporting his need to be absent. Mr. Still requested documentation from his physician at Iowa Ortho, however the physician stated that he did not provide "doctor's notes".

On December 15, 2016, the company sent the claimant a certified letter giving the claimant a final opportunity to supply medical documentation verifying the claimant needed to be absent on the days he had missed work. The claimant was given seven days to provide any documentation, but failed to do so.

Mr. Still believed that the job modifications that had taken place to accommodate his November 17, 2016 doctor's work restrictions were insufficient. Although the employer supplied a chair for the claimant to sit on, he felt that he could not climb up to a second tier break area and believed that his medical condition would impede his ability to perform his duties as the employer expected. Because of pain and swelling in his foot, Mr. Still believed that it would be necessary to elevate and ice his foot at times, even at work. He did not inform his employer that the modifications to his job were insufficient and whether he needed any other kind of accommodation.

Although the employer was seeking only some form of medical documentation to support the claimant's reasons for not reporting to work since his release date of November 17, 2016, the employer was willing to accept any type of documentation to support that need and did not require the statement to come from the claimant's orthopedic doctor. Although the claimant maintained to his employer that no medical documentation could be obtained, the employer had received other statements from medical practitioners verifying the claimant's need to be absent on December 3 and 4, 2016, as well as December 15 and 16, 2016. When the claimant did not provide medical documentation supporting his need to be absent for approximately 20 other occasions, he was discharged from employment seven days after the December 15, 2016 certified letter had been mailed to him.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits; it does.

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. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of unemployment insurance benefits. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The Supreme Court in the State of Iowa in the case of *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984), held that the excessive absenteeism is a form of job misconduct. The court held that absences must be both excessive and unexcused and that the concept includes tardiness and leaving early. The court further held that absence required by illness is deemed excused providing that the employee properly notifies the employer of the impending absence.

In the case at hand, the claimant had been injured at work and had provided a doctor's statement dated November 17, 2016, verifying that the claimant was able to return to work providing that the employer modify his job to allow for sedentary work and the icing and elevation of the claimant's foot. The employer accommodated the claimant's doctor's statement providing the claimant a chair to sit on while honoring his job responsibilities. Although he had been released, the claimant reported for work only on two occasions and did not indicate to the employer in any way that the accommodations they were giving him were unsatisfactory or that additional accommodations needed to be made. When the claimant repetitively called off work, he was asked to supply medical documentation supporting his need to be absent, but did not do so. All company employees that have been absent 14 or more consecutive days are required to provide a doctor's note to verify that their absence had been for a medical reason. Although the claimant was given a final opportunity to provide medical documentation the employer needed, he did not do so. Based upon the previous doctor's statement releasing the claimant for light duty work, the claimant's failure to return and provide medical documentation, Mr. Still was discharged from employment. The claimant's absences after being released to return to work by his physician were unexcused.

Although the administrative law judge is aware that Mr. Still maintains that his orthopedic doctor would not provide a medical statement to support his need to be absent, the administrative law judge notes that other medical documentation had been supplied and that there was no limitation imposed by the employer which required Mr. Still to give only a medical statement from his orthopedic doctor and was free to obtain a medical statement from any medical source that would verify that Mr. Still had been absent for a medical reason.

The administrative law judge concludes that the claimant's continuing absences without any form of medical documentation or requests to the employer for more of different accommodations constitutes disqualifying conduct in connection with the work. Accordingly, the claimant is disqualified from unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated January 24, 2017, reference 01, is affirmed. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terry Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs