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

CHRIS L SAMMONS
Claimant

APPEAL NO. 13A-UI-11098-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

REVSTONE CASTING FAIRFIELD LLC
Employer

OC: 08/25/13
Claimant: Appellant (2)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated September 23, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on October 23, 2013, by telephone conference call. The claimant participated personally. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Chris Sammons.

ISSUE:

Whether the claimant was separated from his employment for any disqualifying reason .

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a foundry. The claimant went on the employer's payroll in March 2013. Previously he had worked at the foundry as an employee of a temporary staffing agency. The claimant was a full-time employee. He was working in the shipping department at the time of his separation of employment. The claimant was terminated on August 5, 2013. He came to work and was told by the lead man that he was fired for "pointing out." The employer has an attendance policy that calls for termination upon reaching eight points. The claimant's absences were due to personal illness. The claimant followed the employer's policy on how to report an absence.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code section 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8) See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988)

The claimant is eligible for unemployment insurance benefits. The claimant did not quit his job. The representative held that the claimant was a voluntary quit due to three days of no-call/no-show. The claimant testified that he properly reported his absences by calling the

employer's automated system at least one hour before the start of the shift. The more reasonable inference from the evidence is that the claimant was terminated because he reached the threshold for termination under the employer's attendance policy. The claimant's absences were due to personal illness, properly reported. This means that the absences are excused absences, even though the employer gave the claimant attendance points for those absences. The employer did not participate in the hearing and there is no evidence to contradict the testimony of the claimant. Since the employer has not established misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated September 23, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

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Vicki L. Seeck
Administrative Law Judge

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Decision Dated and Mailed

vls/css