IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RICK GRAYBILL
Claimant

GRAY TRANSPORTATION INC
Employer

APPEAL NO. 06A-UI-10513-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10-01-06 R: 03
Claimant: Appellant (1)

Section 96 5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 23, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 13, 2006. The claimant participated in the hearing. Darren Gray, President, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time trailer mechanic for Gray Transportation from September 13, 2005 to September 25, 2006. On February 20, 2006, the claimant was a no-cal/no-show. On September 21, 2006, a female called in and said the claimant was sick and President Darren Gray asked her where he was the day before and told her he needed a doctor's note upon his return. On September 22, 2006, the claimant called in sick. On September 25, 2006, he returned to work with a note that excused him from September 20 and September 25, 2006. The employer presented him a written warning for the no-call/no-show on September 20, 2006, and the claimant refused to sign the warning. The warning clearly states, "***Signature on this form by the employee is not an admission of guilt. It is only an acknowledgement that they received warning" (Employer's Exhibit One). The employer intended to place the claimant on 30-days probation. The claimant received a previous attendance warning on September 9, 2006, for failing to call in, failure to respond to service calls and for oversleeping. The claimant signed and dated that warning September 25, 2006. Warnings drop off after 90 days. When the claimant refused to sign the warning the employer considered him to be a voluntary quit and his employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Regardless of whether the claimant was a no-call/no-show on September 20, 2006, he failed to properly report his absence on September 21, 2006 and the evidence shows he never made contact with the employer on September 20, 2006. The warning was not unreasonable under the circumstances. The failure to acknowledge the receipt of a written reprimand by signing it constitutes job misconduct as a matter of law. Green v. IDJS, 299 N.W.2d 651 (Iowa 1980). Because the claimant failed to sign the written reprimand his actions constitute misconduct as defined by Iowa law, even if the written write up may have been unfair, because the employer's form allows employees to sign acknowledging receipt of the warning without having to agree with the warning. Therefore, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The October 23, 2006, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/cs