IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CORY J BRACKIN
Claimant

BAZOOKA FARMSTAR INC
Employer

APPEAL NO. 14A-UI-01399-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/12/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cory Brackin (claimant) appealed a representative's February 4, 2014, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Bazooka Farmstar (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 25, 2014. The claimant participated personally. The employer participated by Byron Davis, Operations Manager; Darren Rhodes, Supervisor. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One 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 15, 2012, as a full-time laborer. The claimant signed for receipt of the employer's handbook on August 14, 2012. The employer issued the claimant a verbal warning on November 6, 2013, and a written warning on December 16, 2013, for attendance issues. The employer notified the claimant that further infractions could result in termination from employment.

On January 10, 2014, the claimant appeared tardy for work at 7:26 a.m. At 7:30 a.m. the claimant asked the employer to leave work to see his doctor. The claimant was feeling too stressed to be at work. He had been diagnosed with depression, anxiety, severe psycho social stressor disorder. The employer told the claimant to return to work because his scheduled appointment was later in the morning. The claimant had to see the doctor immediately.

He left work at approximately 7:45 a.m. after telling the operations manager and his supervisor he was leaving. He saw his physician at about 8:00 a.m. on January 10, 2014. The doctor excused him from work for two weeks and completed Family Medical Leave (FMLA) paperwork.

At 9:05 a.m. the claimant called the employer to confirm that he did not quit work. The employer met with the claimant at 11:00 a.m. on January 10, 2014, the employer told the claimant he was being terminated for job abandonment.

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:
>
> 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.

871 IAC 24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of

absence was a properly reported medical issue which occurred on January 10, 2014. The claimant's absence does not amount to job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's February 4, 2014, decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs