

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer again in 1996. The claimant worked as a full-time cook, meat cutter and trainer. On May 3, 2005, the claimant went on a vacation. The claimant and his family went to Mexico. The employer authorized the claimant to be off work on vacation until May 18, 2005.

When the claimant's wife became ill, the doctors in Mexico would not allow her to fly back to Iowa. The claimant stayed in Mexico with his wife and children until July 31, 2005. After his wife became ill, the claimant notified the employer about his wife's illness and asked for more time off from work. While the employer's manager may have told the claimant to take care of his family, there was no agreement as to how long the claimant could be off from work. The claimant did not return to Iowa until July 31. The employer had no other contact from the claimant until July 31.

By the time the claimant called the employer on July 31, the employer no longer had a job available for the claimant. The claimant was eligible for leave under the Family Medical Leave Act, but the claimant did not ask for a medical leave of absence or provide any documentation verifying his wife was ill and unable to travel until July 31. When the claimant did not return to work in June or July, the employer assumed the claimant abandoned his job.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The claimant did not intend to quit his employment. Ultimately, the employer did not allow the claimant to return to work because the employer had other employees doing the claimant's former job.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The facts indicate the claimant initially informed the employer his wife had become ill in Mexico and asked for more time off from work. While the employer may have granted the claimant more time off, the additional time was for a week or two, not two months. Without any documentation verifying a medical necessity for the claimant to remain in Mexico until July 31, in conjunction with the claimant's failure to keep in contact with the employer or request a medical leave of absence, the employer discharged the claimant for excessive unexcused absenteeism when the claimant did not report to work or call for over two months. The employer discharged the claimant for work-connected misconduct. As of July 31, 2005, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 2, 2005 decision (reference 01) is modified, but the modification has no legal consequence. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 31, 2005. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/kjf