

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RICHARD L ALGER
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 15A-UI-00262-KCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 7, 2015, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on February 2, 2015. The claimant participated. The employer participated through human resources generalist Carrie Jaster. The employer submitted records which were received into evidence as Exhibits 2, 2A, 2B and 3A.

ISSUE:

Was the claimant discharged for work-related, disqualifying misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an automatic foam operator and was separated from employment on October 8, 2014, when the employer terminated his employment.

The claimant began working at Whirlpool on January 3, 2012. He last worked on September 3, 2014, when he went on a non-work related medical leave of absence. The claimant's medical provider completed a medical leave of absence form that indicated the claimant became unable to work beginning on September 4, 2014 and he would "probably" be able physically to return to work on or about October 3, 2014. (Exhibit 3A) The claimant was being treated for high blood pressure and episodes of loss of consciousness.

On September 15, the employer sent a copy of his certificate of non-work related disability completed by his medical provider to the claimant. The form listed a probable end date for the medical of leave absence as October 3, 2014. The letter was returned to the employer as unclaimed. Jaster acknowledged that the employer knew the claimant did not have the form because it was returned.

The claimant saw his medical provider on or about October 1, 2014. The medical provider called the nurse at Whirlpool to determine what blood pressure levels were required before the claimant would be permitted to return to work. The claimant was in the examining room at the time call was made to the employer's nurse. He was not told that he was released to work.

The employer's policies require an employee to report to work within two working days of the date the employee is released to work by the medical provider, or to submit additional information about extending the medical leave of absence. (2A)

In October 2014, the claimant received no documents from his physician to take to the employer and was not told that he had been released to work. The claimant called the employer's absence reporting system on Monday, October 6, 2014 to report that he would not be at work due to illness. He called again and left messages on October 7 and 8, 2014.

On October 8, a certified letter was mailed to the claimant stating that his employment had been terminated effective October 6, 2014 due to violation of a company policy. The claimant called about his employment before he received the termination letter.

The claimant was not at home when a certified letter came from the employer. His elderly mother was at the residence but did not understand what to do. The claimant learned that his employer had terminated his employment when he called the employer.

The claimant had not been informed that his job was in jeopardy. He did not receive a warning about medically-related absences before he was terminated.

The employer did not submit any documentation that the claimant's medical provider had released him to return to work after October 3, 2014, the end date provisionally identified in the initial medical leave of absence. The form is in two parts: the original leave of absence signed by the provider and lower portion which is also to be completed by the provider certifying that the employee is physically able to return to normal duties, with or without medically based restrictions. Alternatively, the provider may document that the medical leave of absence should be extended and a new provisional date be listed. The completed certification of physical fitness to return to work or extension of medical leave was not offered into evidence. (Exhibit 3A)

REASONING AND CONCLUSIONS OF LAW:

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).

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system, no-fault absenteeism policy or leave policy is not dispositive of the issue of qualification for benefits.

The claimant did not know that he had been released to work when he called the employer on October 6, 7 and 8 to report his continuing absence due to illness. In spite of the possible expiration of the medical leave of absence, which was identified as "probably" ending on or about October 3, and because the final cumulative absence for which he was discharged was related to properly reported illness and related ongoing medical treatment, no misconduct has been established and no disqualification is imposed. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The January 7, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/pjs