IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 05A-UI-04175-LT
OC: 03-27-05 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the April 15, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 17, 2005. Claimant did participate and was represented by Elizabeth Lounsberry, Attorney at Law. Employer did participate through Tracy Keller. Claimant's Exhibits A through G were received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time maintenance technician through March 24, 2005 when he was discharged. Lance Dunn, Human Resources Manager at the time, is no longer employed with Eagle Ottawa LLC. Claimant was off work from January 11 through January 24, 2005 because of chronic migraine headaches and Dunn requested documentation for Family Medical Leave Act (FMLA).

Claimant initiated a meeting with the union president and Dunn on March 17 or 18 to determine what else needed to be done in order for him to return to work. Claimant advised Dunn he was able to return to work on March 16 but Dunn told claimant to wait two days for a review of the medical documentation and to rearrange the schedule. Claimant called Dunn each day to see when he could return to work. Dunn told claimant there was insufficient documentation but did not specify what else was required even after being repeatedly asked. Dunn eventually told claimant he needed documentation for the two-week leave rather than intermittent leave.

Claimant's treating physician neurologist Brian Sires, M.D., provided medical certification for FMLA to employer by fax on September 2, 2004 and again on March 15, 2005. (Claimant's Exhibits A and G) The March 15, 2005 certification indicated claimant's inability to work due to migraine headaches could last "24+ hours" with no limitation on the length or frequency because of increased recurring migraines because of medication issues. Employer wanted the medical information to address the two-week leave period rather than as an intermittent leave but did not notify claimant or his physician additional information or clarification was required or that claimant's job was in jeopardy.

Claimant communicated daily with employer's call in number and Dunn about his medical status. He was on unpaid leave but did get short-term disability from the insurance company, which did not question the leave. (Claimant's Exhibits D and E)

Claimant did not receive the letters from employer dated March 11 and March 24, 2005 by certified mail until March 28, 2005, a day after the separation. (Claimant's Exhibit B) Claimant became chief union steward and on January 30, 2005 was informed that he was required to adhere to more stringent FMLA reporting requirements than he had in the past and more than was required of other similarly situated employees who were not union stewards. (Claimant's Exhibit F)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all, 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. Inasmuch as employer had not previously warned claimant his job may be in jeopardy about the issue of the two-week versus intermittent leave documentation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Furthermore, given the medical documentation did not limit the leave period or frequency given the medication review and employer suddenly required the higher recertification standard after claimant became chief union steward, it is apparent that the reason for the separation was pretextual. Benefits are allowed.

DECISION:

The April 15, 2005, reference 01, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

dml/sc