

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL G PETERS
Claimant

CONTRACT TRANSPORT INC
Employer

APPEAL 20A-UI-14300-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/23/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Michael G Peters, the claimant/appellant, filed an appeal from the October 29, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 8, 2021. Mr. Peters participated in the hearing with his attorney, Taylor Reichardt. The employer participated through Jeane Nible, co-owner and Allen Bergman, president. Claimant's Exhibits A, B and C were admitted into evidence.

ISSUE:

Was Mr. Peters' separation from employment a discharge for misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Peters began working for the employer on October 7, 2013. He worked as a full-time dispatcher. His primary job duties were to dispatch drivers and input information into the employer's computer systems. Mr. Bergman was his supervisor. His last day at work was August 19, 2020 and he was separated from employment on August 27, 2020.

The employer's policy provides that employees who can't be at work due to sickness must call in and notify their supervisor and provide a doctor's notice. The employer's written policy does not address the consequences for missing work. In practice, the employer discusses the issue with the affected employee to try to resolve the issue.

Before 2020 Mr. Peters had no work performance issues or any issues with absences. During this time, the employer was lenient on him and allowed him to take many days off. Mr. Peters worked from home whenever he needed to. Mr. Peters would text Mr. Bergman to let him know when he was working from home.

In early 2020, Mr. Peters experienced some medical issues and took time off of work. Upon his return, the employer noticed Mr. Peters' work performance began to dwindle. Specifically, Mr. Peters' computer work was not being done correctly. In July and August, Mr. Peters began being absent even more and his absences caused other employees to have to do their job and Mr. Peters' job. Mr. Bergman had multiple conversations with Mr. Peters about his absences. On August 14, the employer sent Mr. Peters an email informing him that his absences were creating additional workload on other employees.

On August 19 Mr. Peters brought up issues with one of the employer's subcontractors in a staff meeting. The subcontractor is owned by Ms. Nible's sister and brother-in-law. Mr. Peters also brought up issue with the driver's logs. The employer deemed both of these topics inappropriate for the staff meeting.

On August 20, Mr. Peters was written up for losing his temper during the August 19 staff meeting and for yelling at another employee. The warning provided that further violations would result in further discipline up to and including termination of employment. That same day, Mr. Peters met with Ms. Nible and Mr. Bergman and discussed the August 19 meeting and Mr. Peters' absences. During the meeting, Ms. Nible and Mr. Bergman informed Mr. Peters that he needed to be at work when he was scheduled to work and that working from home was no longer an option going forward.

On August 21, Mr. Peters text Mr. Bergman that he wasn't coming to work because he didn't want any confrontation with the employee he had yelled at in the August 19 meeting. Later that morning, Mr. Peters text Mr. Bergman that he was going to need a few mental health days due to his anxiety about the August 19 incident and that he was working on getting a doctor's appointment for August 24. Mr. Bergman responded with his thoughts about the August 19 incident but did not respond to Mr. Peters' request for mental health days or his potential doctor's appointment on August 24. Mr. Peters was written up on August 21 for failing to report to work. The warning provided that further violations would result in further discipline up to and including termination of employment.

On August 24, Mr. Peters did not go to work. Mr. Peters texted Mr. Bergman at 11:01 a.m. that he had a doctor's appointment on August 25 at 2:45 p.m. and that his stress level and anxiety were too high for him to be in the office due to the August 19 incident. Mr. Bergman responded that Mr. Peters was expected to be at work. Mr. Peters did not go to work on August 25 or August 26. On August 26, Mr. Peters texted Mr. Bergman at 10:19 a.m. letting him know that his blood pressure was high on August 25 at his 2:45 p.m. appointment and that he wouldn't be at work again on August 26. Mr. Bergman responded at 4:27 p.m. that the employer would rather that Mr. Peters not come to work until they could evaluate the situation. Mr. Peters did not go to work on August 27. Mr. Peters was written up on August 24 and August 25 for failing to report to work. Both warnings provided that further violations would result in further discipline up to and including termination of employment. The August 25 write up was Mr. Peters' third write up for failing to report to work and fourth total write up. The employer mailed all four writes up to Mr. Peters on August 26.

Mr. Peters did not go to work on August 27. On August 27, the employer mailed Mr. Peters a letter terminating his employment as of that day due to his "failure to perform dues required of your position and meet the expectations of the workplace."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Peters 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 Dept of Job Serv.*, 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. Iowa Dept of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dept of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. The Iowa Supreme Court has opined that one unexcused absence is not misconduct even when it followed nine other excused absences and was in violation of a

direct order. *Sallis v. EAB*, 437 N.W.2d 895 (Iowa 1989). *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984), held that the absences must be both excessive and unexcused. The Iowa Supreme Court has held that excessive is more than one. Three incidents of tardiness or absenteeism after a warning has been held misconduct. *Clark v. Iowa Department of Job Service*, 317 N.W.2d 517 (Iowa Ct. App. 1982). While three is a reasonable interpretation of excessive based on current case law and Webster's Dictionary, the interpretation is best derived from the facts presented.

In this case, the evidence establishes that Mr. Peters was discharged for no disqualifying reason. On August 21 Mr. Peters texted Mr. Bergman and requested a few mental health days. Mr. Peters' words made clear that he was requesting more than one day off. Mr. Bergman did not respond to this request and Mr. Peters did not go to work. While Mr. Peters was written up for this absence, he did not know he was written up because the employer did not tell him until August 26. Mr. Peters informed the employer that he would not be at work on August 24 and August 26. He did not inform the employer of his August 25 absence until the next day. That absence was an unexcused absence. Mr. Peters' one unexcused absence does not rise to the level of misconduct. In addition, Mr. Peters' failure to do his job during the days he was not at work was due to his mental health issues, which made him unable to do his job. This is also not misconduct. Benefits are allowed.

DECISION:

The October 29, 2020, (reference 01) unemployment insurance decision is reversed. Mr. Peters was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

February 1, 2021 _____
Decision Dated and Mailed

dz/scn