IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

BRETT J STONER Claimant **MANKO WINDOW SYSTEMS INC** Employer	**APPEAL 20A-UI-06333-S1-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/23/20** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Brett Stoner (claimant) appealed a representative's June 8, 2020, decision (reference 02) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with Manko Window Systems (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 22, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibit A was received into evidence. The administrative law judge took official notice of the administrative file.

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 in March 2020, as a full-time production associate. The employer's attendance policy states employees are issued one point for an absence with a doctor's excuse and two points for other properly reported absences.

The claimant was absent approximately three days due to issues with his foot. He walked thirty to forty-five minutes one-way to work. He was unable to see a doctor immediately because of Covid-19. The medicine the doctor gave him caused him to vomit. He had to see his doctor again and was absent the entire next week. The claimant properly reported his absences due to medical issues each day. He provided the doctor's notes he had and knew he was over the limit on points.

The claimant contacted the human resources person by email and left a phone message. He asked if he still had a job. The claimant did not want to walk the distance to the employer's location to be told he was fired. The employer would not respond to the claimant because he had already been terminated.

The claimant filed for unemployment insurance benefits with an effective date of February 23, 2020. His weekly benefit amount was determined to be $481.00. He filed an additional claim on May 17, 2020. The claimant did not receive any state unemployment insurance benefits or Federal Pandemic Unemployment Compensation after May 17, 2020.

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, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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(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.

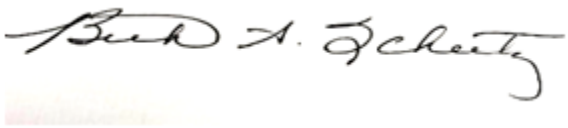
Iowa Admin. Code r.871-24.32(8) provides:

> (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 employer did not participate in the hearing and provided no final incident. All the claimant's absences were properly reported medical issues. Some were documented with doctor's excuses The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The employer refused to communicate with the claimant. The claimant was discharged but there was no misconduct.

DECISION:

The representative's June 8, 2020, decision (reference 02) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

July 30, 2020
Decision Dated and Mailed

bas/mh