

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DIEN T VU
Claimant

APPEAL NO. 14A-UI-10418-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COUNCIL BLUFFS PAYROLL COMPANY
Employer

OC: 09/14/14
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Dien Vu filed a timely appeal from a representative's decision dated September 30, 2014 (reference 01) which denied unemployment insurance benefits, finding that the claimant was discharged from work on August 19, 2014 for failure to follow instructions in the performance of his work. After due notice was provided, a telephone hearing was held on December 4, 2014. Claimant participated. The employer participated by Ms. Jessica Dobbe, Human Resource Specialist.

ISSUE:

At issue is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Dien Vu was employed by the captioned employer d/b/a Conagra from August 15, 2011 until August 19, 2014 when he was discharged from employment. Mr. Vu was employed as a full-time sauce cook and was paid by the hour. His immediate supervisor was Darren Barry. Mr. Vu was discharged because he had failed to provide medical documentation supporting his continued need to be absent from work by August 11, 2014; the date specified by the employer. The claimant's absences after that date were not authorized and were not excused because Mr. Vu continued to be absent but did not call in to report his absences on August 12, 2014 through August 18, 2014; as required by company policy.

Mr. Vu had informed the company on June 12, 2014 of a medical condition that prevented him from working and the claimant requested to be placed on a medical leave of absence at that time. The claimant's request to be placed on a leave of absence was approved, however, Mr. Vu was required to submit medical documentation to support his need to be absent from work.

The employer sent Mr. Vu letters on June 23 and July 28; instructing him to submit the required medical documentation. On July 28 Mr. Vu spoke to a human resource representative of the company via telephone and was told at that time that a letter was being mailed to him, requiring him to have the additional documentation submitted by August 11, 2014. Mr. Vu was further

informed that any additional absences without the required documentation, after that date, would be considered unexcused. Because the absences were not approved as excused absences in advance, Mr. Vu was required to call in each day to report his impending absences from work. When the claimant did not report for work or call in on August 12, 2014 through August 18, 2014, and had not supplied any medical documentation to support his continuing need to be absent from work, he was discharged from employment.

Mr. Vu believed that the medical treatments that he was receiving were not helping his medical condition and Mr. Vu elected to return to his native country, Vietnam, for medical treatment. The claimant left the United States on August 5 to travel to Vietnam for medical treatment and cancelled a medical appointment that had been scheduled for August 11, 2014. Mr. Vu left a message for the employer that he was leaving the country. Mr. Vu returned from Vietnam on September 13, 2014 and at that time found the letter the company had sent him informing him of his termination from employment.

REASONING AND CONCLUSIONS OF LAW:

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In discharge cases, the employer has the burden of proof. See Iowa Code Section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee, may not necessarily be serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this case, Mr. Vu was discharged because he had not followed the employer's repeated requests that he submit additional medical documentation by August 11, 2014 to confirm his need to continue to be absent from work for medical reasons. Mr. Vu was informed of the requirement both in writing and verbally in a telephone call that he had with his employer prior to leaving for Vietnam on August 5, 2014. Although Mr. Vu knew that he must submit additional documentation in order for additional absences from work to be excused, he did not attempt to have additional documentation submitted but instead made a decision to travel to Vietnam for medical treatment that he believed would be more effective. Mr. Vu was aware that if he did not submit the required documentation, that additional absences after August 11, 2014 would not be authorized and that company policy required that employees call in each day they are absent if their absence from work has not been preauthorized by the employer.

The employer waited a substantial period of time before discharging Mr. Vu and did so on August 18, 2014 after the claimant had failed to supply any medical documentation supporting his continuing need to be on an approved leave of absence; and after the claimant had failed to report for work for several days in a row, without providing any additional notification to the employer each day as required by established policy.

The question before the administrative law judge in this case is not whether Mr. Vu made a correct decision in traveling to Vietnam for medical treatment but whether the claimant's failure to supply required medical documentation and his failure to comply with the daily notice provisions of the employer's attendance policy constitute misconduct.

Although Mr. Vu's reasons for leaving the country to seek medical treatment were good, his failure to follow the employer's request for medical documentation and notice of each impending absence was in disregard to the employer's interests and reasonable standards of behavior that the company had a right to expect of its employees under provisions of the Employment Security Law. No contract for employment is more based than the right of the employer to expect its employees will work on the hour and day they have agreed upon and failure to honor that obligation, without providing the required notice to the employer, shows disregard for the employer's interests and standards of behavior; and justifies misconduct in connection with the work. The claimant did not make sufficient arrangements before leaving for Vietnam, to supply the needed medical documentation to ensure that his continuing absences were authorized and would not be held against him or require that he call in each day.

Because the employer has sustained its burden of proof in establishing disqualifying misconduct; unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and he is otherwise eligible.

DECISION:

The representative's decision dated September 30, 2014 (reference 01) is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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