IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BLAIR E JONES
Claimant

RICHELIEU FOODS INC
Employer

APPEAL NO. 07A-UI-00224-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/26/06 R: 03
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Blair Jones (claimant) appealed a representative's December 29, 2006 decision (reference 04) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Richelieu Foods (employer) for excessive unexcused absenteeism after having been warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 23, 2007. The claimant participated personally. The employer participated by Dale Akkerman, Production Supervisor; Larry Rasmussen, Plant Controller; and Doug Baldwin, Production Supervisor. The claimant offered one exhibit which was marked for identification as Exhibit A. Exhibit A was received into evidence. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

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 on August 1, 2005 as a full-time spice weigher/mixer. The claimant signed for receipt of the company handbook on August 1, 2005. The handbook indicates that an employee should contact the employer each day the employee is absent at least one hour prior to the start of his shift. The employer issued the claimant written warnings on November 18, 2005, and January 30, 2006, for properly reported absences due to illness.

The claimant last worked on February 1, 2006. After that he was ill. At first he had an intestinal virus, then a bowel obstruction and at the end he had pneumonia. The claimant properly reported his absences to the best of his ability. Some days he was unable to report because he was hospitalized.

On February 22, 2006, the claimant met with the employer and provided doctor's excuses to the employer for most of his absences. The employer gave the claimant a letter and forms for

Family Medical Leave and Short Term Disability. The employer informed the claimant that he had to state his intentions by February 28, 2006, or be terminated.

On the morning of February 23, 2006, the claimant passed out at home of pneumonia. He was hospitalized for two days and then released to return home. He was restricted to his home for six days. The claimant contacted the employer that he intended to take Short Term Disability but his physician was unable to complete the forms until March 1, 2006. The employer refused the claimant additional days to return the form. The employer issued the claimant a letter of termination on February 28, 2006.

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:
>
> 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).

871 IAC 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 last incident of absence was a properly reported illness which occurred in February 2006. The claimant's absence does not amount to job misconduct because it was properly reported.

In addition, the claimant's failure to provide the employer with Short Term Disability Forms does not qualify as misconduct. The letter of February 22, 2006, indicated that the claimant should communicate his intentions by February 28, 2006. The letter does not state that the claimant had to have his forms in by February 28, 2006. The claimant did communicate his intentions prior to February 28, 2006. The claimant provided the documentation as soon as humanly possible. The employer would not consider that the claimant was passed out, hospitalized and confined to his home. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's December 29, 2006 decision (reference 04) 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

_____
Decision Dated and Mailed

bas/pjs