IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TYRONE D BENSON
Claimant

IAC IOWA CITY
Employer

APPEAL NO: 13A-UI-00058-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/23/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tyrone Benson (claimant) appealed a representative's December 21, 2012 decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with IAC Iowa City (employer) for excessive unexcused absenteeism and tardiness after having been warned. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 4, 2013. 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.

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 on February 25, 2011, and at the end of his employment the claimant was working as a full-time finish operator. The claimant signed for receipt of the employer's handbook. The claimant understood the he would be terminated if all of his 60 attendance points had been deducted. The employer deducted points when the claimant properly requested paternity leave for the birth of his daughter and would not reinstate the claimant's points. The claimant's time card was scratched and would not swipe properly but the employer would not reimburse the claimant for missed swipes.

The claimant admits that he was tardy to work due to being stopped by law enforcement in excess of 20 times on his way to work. He believes the stops were due to racial profiling or that the car was owned by a person with a possession charge. The claimant admits he was absent from work three times. He was absent two days when his daughter was born. On or about November 15, 2012, the claimant notified the employer he would be absent because his infant daughter was ill. The employer terminated the claimant.

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.

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). In light of good faith effort, absences due to inability to obtain child care for a sick infant, although excessive, did not constitute misconduct. McCourtney v. Imprimis Technology, Inc., 465 N.W.2d 721 (Minn. App. 1991). In this case the claimant's final incident of absenteeism was to care for his sick infant. The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's December 21, 2012 decision (reference 03) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs