

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE L CARPENTER
Claimant

APPEAL NO. 12A-UI-06884-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEBSTER CITY CUSTOM MEATS INC
Employer

OC: 04/29/12
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 4, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on July 3, 2012. Claimant participated and was represented by Ernest Kersten, attorney at law. Employer participated through Company President Connie Ingraham, Human Resources Generalist Misty Kepler, and Payroll Manager Lisa Ely. Claimant's Exhibit A was admitted to the record.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a laborer from November 2, 2010 and was separated from employment on May 2, 2012. His last day of work was March 23, 2012. He was discharged because he failed to return Family Medical Leave Act (FMLA) paperwork presented to him by the employer. Ingraham gave the paperwork to him on March 26 and it was due on April 9. Ingraham spoke with him March 30 when he brought in a regular medical excuse and reminded him about the deadline for returning the paperwork. He brought in another excuse on April 2 and Ingraham again reminded him. He presented another excuse on April 5 and was reminded about submitting the FMLA paperwork and told him to call the doctor's office from the employer's phone. He told the doctor's office there was a deadline and that his job was in jeopardy. Claimant did not receive calls from Ingraham or Kepler that the documents were not received and he was not aware the forms submitted to the employer on April 19 were unsigned or incomplete. The stated duration of the condition was expected to last two to three weeks to end in mid-March, and there was a referral to a pulmonologist, so the referring physician did not sign them. The pulmonary tests were conducted on May 1 and the results received the same day indicated there was nothing wrong with his lung system and he could work, but not in a refrigerator or freezer unit. He gave the information to the employer, but there was no work for him that would meet the restriction. He was discharged the following day.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 Dep't 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 Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged was merely an isolated incident of inability to dictate to his treating and referring physician what to include in the FMLA paperwork or when to complete it. Although he knew his job was in jeopardy, he had no reasonable means by which to force the doctor to provide the information. Furthermore, since the employer waited for three weeks after

the initial deadline and discharged the claimant a day after he presented his medical release with permanent restrictions prohibiting work in a freezer or refrigerator, it has not met the burden of proof to establish that claimant engaged in any misconduct. Nor did he act deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The June 4, 2012 (reference 01) decision is reversed. The claimant was discharged from the employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw