

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN A VANDERPLOEG
Claimant

APPEAL NO. 13A-UI-11600-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC
Employer

OC: 09/15/13
Claimant: Appellant (2)

871 IAC 24.32(7) – Absenteeism
Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 9, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on November 7, 2013. Claimant participated. Employer did participate through Julie Coughlin, Branch Manager.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was last assigned to work at Raining Rose as a production worker full time beginning on June 20, 2013 through August 23, 2013, when he was discharged by the client company but still eligible for additional assignments for work through Remedy Intelligent Staffing. While at home on August 23, 2013 the claimant's blood pressure skyrocketed he passed out and fell down a flight of stairs injuring his hip. He was hospitalized for the next three days. His wife, Glenda Green called the Remedy office to report that he would be absent due to his hospitalization. She was told by the employee who answered the telephone that they would make a note of it. The claimant properly reported his absences due to the hospitalization. The claimant was off work through September 13, 2013 following the accident per his doctor's instructions. The employer has no record of the claimant or his wife calling on his behalf to report his absence. The claimant was removed from the assignment at Raining Rose when they determined that he was a two-day no-call/no-show for work.

When the claimant next spoke to an employee of Remedy in September 2013 he was told he was no longer eligible and assumed he had been discharged and filed his claim for unemployment insurance benefits. He was also told during that conversation that Kayla would call him back to explain further. She did not and is no longer an employee of Remedy.

After Kayla left employment another employee of Remedy tried to contact the claimant but found his telephone number disconnected. The claimant is now physically able to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(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.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

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. An employee who is ill or injured is not able to perform their job at peak levels. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. The administrative law judge concludes that the claimant's wife did report his absence due to injury properly to the employer. Under these circumstances absences due to injury are excused. Once the claimant was released by his doctor to return to work he was told he was no longer eligible leading him to conclude that he had been discharged. Because the final absence for which he was discharged was related to properly reported illness or injury, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The October 9, 2013, (reference 01) decision is reversed. The claimant was discharged from employment and the assignment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css