IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BRIAN P FAWCETT
Claimant

UNITED STATES GYPSUM COMPANY
Employer

APPEAL NO. 17A-UI-09694-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/20/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

United States Gypsum Company (employer) appealed a representative's September 11, 2017, decision (reference 01) that concluded Brian Fawcett (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 6, 2017. The claimant participated personally. The employer participated by J.T. Tristan, Human Resources Manager; Tom McCrady, Joint Treatment General Foreman; and Harold Graves, Joint Treatment Supervisor. Exhibit D-1 was received into evidence.

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 May 9, 2016, as a full-time manufacturing operator three. The claimant signed for receipt of the employer's handbook when he was hired. The employer has a Quality of Work Life Policy. The policy prohibits intimidating or offensive behavior in the workplace. The claimant was trained on the policy on November 17, 2016. On July 21, 2017, the employer issued the claimant a written warning for Quality of Work Life Policy violations from November 17, 2016, to July 19, 2017. The claimant yelled in the work place and lost his temper. The employer notified the claimant that further infractions could result in termination from employment.

From August 11 to August 18, 2017, the claimant properly reported his absences due to a medical issue. The claimant drove into the employer's parking lot on August 16, 2017, to deliver his doctor's release to return to work effective Monday, August 21, 2017. The manager walked out to the lot to retrieve the release and told the claimant he had to see the employer's doctor before he returned to work. The claimant said his condition was not work-related. The manager said it was company policy. This policy is unwritten but the employer enforces it. The claimant was unaware of its existence.

On August 17, 2017, the claimant's supervisor called the claimant. The supervisor told the claimant he had an appointment to see the employer's physician at 2:00 p.m. on August 18, 2017. The employer planned to pay for the doctor's appointment. It would not pay the claimant for his time. The claimant called his personal physician. The claimant's doctor had prescribed the claimant muscle relaxers and Tylenol and wanted the claimant to stay at home and rest. The doctor told the claimant not to go to a work-related doctor's appointment until Monday, August 21, 2017. The claimant called his supervisor and relayed the information. He was not released to return to work prior to Monday, August 21, 2017.

On August 18, 2017, at 9:00 a.m., the claimant was sleeping when the general foreman woke him up. The claimant was groggy from his medication and crabby from the pain. The general foreman attempted to give the claimant information. The claimant told the general foreman he was not going to see the company doctor. The general foreman told the claimant he was scheduled for work at 5:00 a.m. on August 21, 2017, but could not return to work if he did not see the company doctor that afternoon. The claimant hung up the telephone on the general foreman. The claimant followed his doctor's instructions and stayed home on August 18, 2017. He did not see the employer's physician.

On August 21, 2017, the claimant appeared for work on time. The employer suspended the claimant for failure to attend the employer's doctor's appointment for a non-work-related medical condition while he was not released to return to work. On August 24, 2017, the employer terminated the claimant for being rude to his general foreman on August 18, 2017, in violation of an oral policy.

The claimant filed for unemployment insurance benefits with an effective date of August 20, 2017. The employer provided the name and number of Treena Gilmore as the person who would participate in the fact-finding interview on September 7, 2017. The fact finder called Ms. Gilmore but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided some documents for the fact finding interview. It did not provide a copy of the specific rule or policy that the claimant violated which caused the separation. An employee with firsthand information could not be contacted for rebuttal.

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, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

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). Off premises during lunch hour, claimant assaulted co-worker for alleged rumors spread by co-worker. Court of Appeals allowed benefits, noting lack of evidence of negative impact at work place plus fact that claimant finished the day before being discharged. *Diggs v. Employment Appeal Board*, 478 N.W.2d 432 (Iowa App. 1991).

The employer terminated the claimant because his behavior was rude and unacceptable while he was at home due to medical reasons. The employer considered calling the claimant at home at 9:00 a.m. while he was sick acceptable. The employer considered requiring the claimant to comply with a policy the claimant had never received acceptable. The employer considered expecting the claimant to attend an appointment without pay and outside his doctor's instructions acceptable. The employer considered expecting the claimant to behave in a civil manner while he was in pain and taking medication acceptable.

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. The employer terminated the claimant for violation of the Quality of Work Life Policy but the claimant was not at work. There was no evidence regarding how the claimant's behavior at home had any impact at work. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's September 11, 2017, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/scn