IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

TYREE CLAY Claimant **DRM INC** Employer	**APPEAL 20A-UI-10170-J1-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/17/20** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On August 26, 2020, the claimant filed an appeal from the August 20, 2020, (reference 03) unemployment insurance decision that denied benefits based on No Call/No Show. The parties were properly notified about the hearing. A telephone hearing was held on October 5, 2020. Claimant participated. Employer participated through Jennifer Farnsworth, General Manager and Thomas Kuiper, Hearing Representative.

ISSUE:

Did claimant voluntarily quit his employment without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on January 6, 2020. Claimant last worked as a part-time crew member. Claimant was separated from employment on June 23, 2020, when Ms. Farnsworth considered that claimant failed to follow attendance policy and fired claimant.

Claimant was a member of the crew at an Arby's restaurant. The claimant received the employer's attendance policy at the time he was hired. The attendance policy relevant to this case according to Ms. Farnsworth was that an employee is to call 5 hours before a shift if the employee cannot make it to work or find a replacement for their shift. Ms. Farnsworth testified that the claimant called 5 minutes before his shift on June 14, 2020 and told her he was sick and could not come to work. Ms. Farnsworth did not hear from claimant the next day, June 15, 2020, and terminated the claimant for violation of attendance policy. Ms. Farnsworth did not speak to Mr. Cunningham about the claimant before she terminated the claimant.

Mr. Clay testified that he was ill and was running a fever and throwing up on March 23, 2020. Mr. Clay said he called Ms. Farnsworth according to policy and told her he could not come in for his shift. Claimant attempted to find someone to cover his shift, but could not. Claimant called work about two hours before his shift and spoke to shift manager Josh Cunningham to let him know he was ill and could not find a replacement. Mr. Cunningham told claimant to get a doctor's note.

Claimant self-quarantined for 14-days due to the recommendations of state and federal officials. Claimant did obtain a doctor's note and had a co-worker deliver it to the employer around June 2, 2020. When claimant had finished his self-quarantine he called and asked to be on the schedule and was told he had been terminated.

REASONING AND CONCLUSIONS OF LAW:

There was some discrepancy as to the date that claimant was terminated. The fact finding listed March 23, 2020, and claimant testified that that was the date he first called in sick to work. The employer testified that claimant was discharged June 15, 2020 after calling in sick and not showing up at work the next day. While I find claimant was discharge as of March 23, 2020, the discrepancy between the dates is not significant. The sequence of his discharge, of calling in sick and then being fired the next day, are the material facts concerning this unemployment claim.

I find the claimant's testimony to be credible. Claimant's testimony was consistent with the prior information he provided this agency and was sufficiently detailed and consistent to lead to finding his testimony the most credible.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left his employment. *Irving v. Emp't Appeal Bd*., 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd*., 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd*., 492 N.W.2d 438, 440 (Iowa Ct. App. 1992).

Claimant did not quit his employment. Claimant informed his supervisors at work about his medical condition. Claimant was following what he had been told to do by Mr. Cunningham. Claimant was reasonably following the guidelines on self-quarantine and reported back to work and was told he was terminated.

The next issue to determine is whether claimant committed job related misconduct. I find he did not.

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 to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv*., 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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). Misconduct justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv*., 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Id. Negligence is not misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv*., 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd*., 423 N.W.2d 211 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd*., 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd*., 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

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, it incurs potential liability for unemployment insurance benefits related to that separation. 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."

In order for a claimant's absences to constitute misconduct that would disqualify claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See Iowa Administrative Code rule 871-24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See Iowa Administrative Code rule 871-24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Employers may not graft on additional requirements to what is an excused absence under the law. See *Gaborit v. Employment Appeal Board*, 743 N.W.2d 554 (Iowa Ct. App. 2007). For example, an employee's failure to provide a doctor's note in connection with an absence that was due to illness properly reported to the employer will not alter the fact that such an illness would be an excused absence under the law. *Gaborit*, 743 N.W.2d at 557.

The claimant followed the employer's policies and notified his supervisors about his absence for medical reasons. The employer has failed to show either excessive or unexcused absences. The evidence in the record establishes a discharge for no disqualifying reason.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The August 20, 2020, (reference 03) unemployment insurance decision is reversed. Benefits are payable, provided claimant is otherwise eligible.

James F. Elliott
Administrative Law Judge

October 7, 2020
Decision Dated and Mailed

je/sam