IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

WILLIAM J KAMSTRA
Claimant

ROME LTD
Employer

APPEAL NO: 19A-UI-01866-TN

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/27/19
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

William J. Kamstra, the claimant filed a timely appeal from a representative's unemployment insurance decision dated February 22, 2019, (reference 02) which denied unemployment insurance benefits, finding that the claimant was discharged from work on January 28, 2019 for violation of a known company rule. After due notice was provided, an in-person hearing was held in Spencer, Iowa on April 18, 2019. Mr. Kamstra appeared personally and testified on his own behalf. Although duly notified, the employer did not to appear at the hearing but submitted documentation (11 pages) in lieu of appearance. The Employer's 11 page submission was identified as Department Exhibit D-1 and admitted into the record in conjunction with the remaining administrative file.

ISSUE:

The issue is whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The findings of fact are based solely on the claimant's testimony during the hearing of this matter as the employer elected not to appear at the hearing. Having considered all of the evidence in the record, the administrative law judge finds: William J. Kamstra began employment with Rome, Ltd in August 2016. Mr. Kamstra was employed as a part-time machinist. As a part-time employee, the claimant worked a varying number of hours each week depending on employer needs and at times worked 40 or more hours per week. Mr. Kamstra was paid by the hour. His immediate supervisor was Mr. Dan Heiliger. Mr. Kamstra was discharged from employment on Monday, January 28, 2019.

Mr. Kamstra was discharged on Monday, January 28, 2019 when he returned after being absent from work on Wednesday, January 23, Thursday, January 24, and Friday, January 25, 2019, and did not provide a doctor's note upon his return. Under company policy, employees are required to provide a doctor's note if they are absent due to illness for three or more consecutive days. Mr. Kamstra telephoned but did not speak to his supervisor or to any company personnel on each of the three days that he had been absent but left messages on the company

answering machine on each day. The messages stated that he would not be reporting for work. Mr. Heiliger responded by sending the claimant text messages inquiring if the claimant was alright, whether he was ill, and when he would be reporting back to work. Mr. Kamstra received the inquiries but did not respond.

Company policy requires employees to notify the company of impending absences each day, unless the absence has been pre-approved by the company. For pre-approval, the company normally uses a request system, wherein the employee initiates a request, and later receives written approval if approved by the company. If employees call off work, policy requires them to notify their supervisor each day that they are off work. If an employee has been approved for vacation or personal time off work by the company in advance of the absence, the employee is not required to call in.

Mr. Kamstra testified that he had been given authorization from his immediate supervisor in December 2018 to be absent and to use vacation time on the three days in question. When Mr. Kamstra asked Mr. Heiliger to approve three days' vacation time for January 23, through the 25th, 2019 so that Mr. Kamstra and his wife could travel to Colorado to look at property that they were considering buying, his supervisor replied "if you're going to Colorado I can't let you go, but if you're going to stay here to work on your trailer, I'll let you take the time off." Based upon his supervisor's statement, Mr. Kamstra believed that he had been authorized to take three vacation days by his supervisor and believed it was vacation time, he was free to use the vacation days as he saw fit.

Mr. Kamstra received texts from his supervisor on each of the days but did not respond. Mr. Kamstra considered himself to be "on vacation." He considered the calls annoying, and felt he had no obligation to respond or provide further information to the company because his absences were pre-approved. Mr. Kamstra maintains that he called in each day to lessen any concerns that the company may have had about his well-being due to weather conditions. He did not provide a doctor's note because he did not visit a doctor, and there was no need to turn in a doctor's note for being away on vacation time.

On Monday, January 28, 2019, Mr. Kamstra attempted to report back to work but he was sent home because he did not have a doctor's note excusing his absence for the three days. Subsequently he was notified that he had been terminated.

Mr. Kamstra asserts that his termination was unjustified because he had been given approval to use vacation time by his supervisor, and believes the true reason for his termination was because work was slowing down at the employer's facility.

REASONING AND CONCLUSIONS OF LAW:

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.
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> 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).

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the Unemployment Insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct and culpability. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661,665 (Iowa 2000).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

In the case at hand, the claimant appeared personally, testified under oath and subjected himself to cross examination. In contrast, the only information in support of the employer are documents that contain unsworn statements and references to company policy. In the absence of any evidence of equal weight either contradicting or denying the claimant's sworn testimony, the weight of the evidence is established in favor of the claimant. The claimant had been absent from work for three consecutive work days, and during the time that he was absent, Mr. Kamstra and his wife had traveled to the state of Colorado to look at property they were considering buying. Employees who have advance permission from the company to be gone from work using accrued vacation time, are not required to call in each day to report each day's absence if the company had authorized the absence in advance but Mr. Kamstra chose to call in each day.

If an employee is absent from work without prior approval or is not authorized to use vacation time, the employee must call in each day. If the absences are because of being ill, a doctor's note is required after three or more days of absence. If the days of absences are authorized as vacation in advance and are not due to illness, then there is no basis for requiring a doctor's note upon return.

Based upon the claimant's testimony and the evidence in the record, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing intentional disqualifying work-connected misconduct sufficient to deny unemployment benefits.

In this case a number of Mr. Kamstra's actions may not have been consistent with those expected of others who had advanced authorization by a supervisor to be gone from work, they do not of themselves establish work-connected misconduct. The record is devoid of information about the employer's policy about non-illness absences, the number of absences allowed and how the company determines which absences are excused or considered unexcused, and any devoid of any testing by Mr. Kamstra's supervisor about whether they had authorization to be absent.

The claimant's failure to provide a doctor's note for three days approved absence does not in and of itself constitute job related misconduct. The decision to terminate Mr. Kamstra may have been a sound management decision, but evidence in the record is not sufficient to establish intentional job-related misconduct. Benefits are allowed.

DECISION:

The representative's unemployment insurance decision dated February 22, 2019, reference 02 is reversed. Claimant was dismissed under non-disqualifying circumstances. Benefits are allowed, provided the claimant is otherwise eligible.

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Terry P. Nice
Administrative Law Judge

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Decision Dated and Mailed

tn/scn