IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RANDALL R YENNEY
Claimant

HY-VEE INC
Employer

APPEAL NO. 12A-UI-14308-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/28/12
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Randall Yenney, filed an appeal from a decision dated November 20, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 10, 2013. The claimant participated on his own behalf. The employer, Hy-Vee, participated by Assistant Vice President of Warehousing Carla Heffron, Vice President of Distribution Todd Hawkinson and was represented by Corporate Cost Control in the person of John Fiorelli

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Randall Yenney was employed by Hy-Vee from July 21, 1999 until October 30, 2012 as a full-time warehouse worker. He had been given progressive discipline for attendance during his employment. The company policy calls for discharge at nine points.

On October 23, 2012, he received a final written warning when he had accumulated 9.5 points. The employer gave him a second chance but warned him any further unexcused absences would lead to discharge. He was also given information about the EAP and FML provisions available to him to help deal with her personal problems.

On October 28, 2012, the claimant was absent from work. His wife called in less than one hour before the start of the shift to report he was in the hospital. On October 29, 2012, the claimant himself called and said he was not in the hospital but was in jail. He came in to meet with Vice President of Warehousing Carla Heffron and she notified him he was discharged.

The parties were advised at the beginning of the hearing that if they lost the phone connection during the hearing the judge would not call them back until they contacted the Appeals Section to affirm they had phone service. Mr. Yenney lost the connection at 8:34 a.m. and did not call by in by the time the record was closed at 8:37 a.m.

The claimant called in at 8:41 a.m. stating he had elected to use a cell phone contrary to the instructions on the notice of the hearing and it had lost service.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

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 claimant had been advised his job was in jeopardy as a result of his absenteeism. The employer even elected to give him some leeway because of his personal problems and not fire him October 24, 2012, even though he had exceeded the point level where discharge would normally occur.

The final incident was an absence due to being in jail. This is not an excused absence as it is a matter of personal responsibility. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). The claimant

was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

871 IAC 26.14(7) provides:

> (7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.
>
> a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.
>
> b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.
>
> c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The claimant elected to use a cell phone contrary to the recommendation on the notice of the hearing. Such. Therefore, the claimant's request to reopen the hearing is denied.

DECISION:

The representative's decision of November 20, 2012, reference 01, is affirmed. Randall Yenney is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/css