

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIAN S JAHNKE
Claimant

WINNEBAGO INDUSTRIES
Employer

APPEAL 17A-UI-07632-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/09/17
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 24, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on August 16, 2017. Claimant participated. Employer participated through human resources supervisor Susan Gardner. Employer's Exhibit 1 was received. The employer submitted additional documents, which were included in the record as Employer's Exhibit 2. One note in particular, the prescription pad note that copied with "VOID" covering part of the text, is partially illegible and has limited foundation as to the handwriting at the top of the page, separate from the note. The weight given that document is discussed below.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time production assembler/fabricator through July 5, 2017. His last day of work was June 26, 2017. He had been absent from Tuesday, June 20 through Friday, June 23, 2017, because of a sinus infection. He was accused of having presented an altered June 22, 2017, doctor's note adding the dates "6-20 – 6-23" above the typed "Plan: off work until monday 6/26/17". At the end of the appointment that day, the nurse put the note on the counter in the waiting area. Claimant was "out of it" and did not look at the note before putting it in his pocket. His girlfriend had driven him to the appointment because he could not drive, but she did not see the note. By the time he returned home, the fax location was closed so he faxed it the next morning and put the original note in his lunch bag to take with him to work on Monday, June 26. That morning human resource director Gary McCarthy told him not to return to work until he could verify the information. Dr. Kevin Kimm, D.O. clarified on June 30, 2017, "I am convinced that Brian did not alter the work excuse. He had a severe sinus infection which required [illegible] 6-20-17." The handwriting above the copied portion of the note that reads "*CSC – did not alter work note*" is not identified as to time, date or author. (Employer's Exhibit B) He returned to work June 26, 2017, and was kept off work until the employer could

investigate the excuse authenticity. The employer did not contact the doctor's office again about the prescription pad note legibility but relied on the handwritten starred note above it, and fired claimant. Claimant had no prior discipline.

REASONING AND CONCLUSIONS OF LAW:

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

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14(1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608.

The decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of whether the note had been altered and did not make an attempt to verify the illegible written content of the doctor's June 20 note. Given the serious nature of the proceeding and the employer's allegations resulting in claimant's discharge from employment, the employer's nearly complete reliance on hearsay statements is unsettling. Noting that the claimant presented direct, first-hand testimony while the employer relied upon an unverified second-hand report inconsistent with the legible portion of the doctor's note, the administrative law judge concludes that the claimant's recollection and version of the events is more credible than that of the employer.

Iowa Code section 96.5(2)a provides:

Causes for disqualification.

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.

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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Misconduct "must be substantial" to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Id.* (citation omitted). ...the definition of misconduct requires more than a "disregard" it requires a "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." Iowa Admin. Code r. 871-24.32(1)(a) (emphasis added).

Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)).

Falsification of a medical note may be considered disqualifying misconduct, even without prior warning. However, in this case, the claimant's doctor credibly opined that claimant had not altered the excuse. The unsigned note above that statement is not reliable information because of a lack of foundation including information about the author, source of information and date of the note. The employer has not met its burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning to alter the medical excuse.

DECISION:

The July 24, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs