

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSHUA J KLEINHANS
Claimant

IOWA PREMIUM LLC
Employer

APPEAL 17A-UI-09245-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/13/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 30, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 27, 2017. Claimant participated. Employer did not participate. Claimant Exhibit A was admitted into the record with no objection.

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 full-time as a material handler from February 2016, and was separated from employment on August 14, 2017, when he was discharged.

The employer has an attendance policy which applies point values to attendance infractions, including absences and tardies. The policy also provides that an employee will be warned as points are accumulated, and will be discharged upon receiving twelve points in a rolling twelve month period. The employer requires employees contact the employer and report their absence prior to the start of their shift. Claimant was aware of the employer's policy.

Claimant suffered a non-worked related injury on May 29, 2017. On June 1, 2017, claimant went to the doctor and received a doctor's note excusing him from work from May 29, 2017 through June 4, 2017. Claimant Exhibit A. Claimant provided the June 1, 2017 doctor's note to the employer.

Claimant then went to the doctor again on June 5, 2017. Claimant Exhibit A. On June 5, 2017, claimant obtained a doctor's note excusing him from work until June 12, 2017. Claimant Exhibit A. Claimant provided the June 5, 2017 doctor's note to the employer.

On June 9, 2017, claimant obtained another doctor's note that excused him from work until further notice. Claimant Exhibit A. Claimant also applied for Family and Medical Leave Act (FMLA) leave. Claimant turned in his FMLA paperwork around June 11 or 12, 2017. Claimant was instructed to call in everyday until he heard back from the employer. Claimant called in

every day he was scheduled for work. On June 21, 2017, the employer called claimant and informed him that he needed an estimated return date for his FMLA leave paperwork. Claimant Exhibit A. On June 22, 2017, claimant obtained a doctor's note that showed he would be able to return to work on July 24, 2017. Claimant Exhibit A. Claimant provided the June 22, 2017 doctor's note to the employer. On June 25, 2017, the employer called claimant and told him that his FMLA leave was not approved and therefore he was required to call in every day to report his absences. Claimant continued to call the employer every day to report his absences.

On July 20, 2017, claimant called his doctor and obtained a doctor's note that excused him until August 4, 2017. Claimant provided the July 20, 2017 doctor's note to the employer. Claimant did not return to work on July 24, 2017 because he was under the supervision of his physical therapist.

On August 4, 2017, claimant returned to the employer to work. Claimant brought the employer a doctor's note dated August 3, 2017 that stated he was eligible to return to work with no restrictions on August 4, 2017. Claimant Exhibit A. The employer refused to allow claimant to return to work because his last doctor's visit was on June 5, 2017. The employer required claimant to go back to his doctor to ensure he was able to return to work. Claimant told the employer he could not get into his doctor until August 10, 2017. Claimant called the employer on August 8, 9, 10, and 11, 2017 to report his absences. Claimant Exhibit A. Claimant saw his doctor on August 10, 2017. Claimant obtained a doctor's note dated August 11, 2017 that excused him from work from August 4, 2017 through August 14, 2017 and he was able to return to work on August 15, 2017 without restrictions. Claimant Exhibit A.

On August 15, 2017, claimant returned to work and the employer told him he was discharged. Claimant was initially told he was discharged due to a no-call/no-shows on August 8, 9, 10, and 11, 2017. Claimant provided documentation that showed he did call in on August 8, 9, 10, and 11, 2017. Claimant Exhibit A. The employer then told claimant to call back to see if he could be reinstated. Claimant called the employer for three straight days. Around August 17 or 18, 2017, the employer told claimant he was discharged for not following the employer's Family and Medical Leave Act (FMLA) leave procedures because he did not have return dates on his doctor's notes. Claimant contacted the employer every day he was normally scheduled to work (Monday through Saturday) from May 29, 2017 to August 15, 2017 and reported his absences due to his injury.

Claimant did not have any prior disciplinary warnings for not following the employer's FMLA leave procedures. Claimant did have a prior disciplinary warning for absenteeism around the end of 2016 or beginning of 2017.

REASONING AND CONCLUSIONS OF LAW:

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

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(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 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." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). 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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute 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).

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the incident under its policy.

Claimant suffered a non-work related injury and was off work from May 29, 2017 through August 14, 2017. During this time period, claimant called the employer each day he was normally scheduled to work to report his absences. Claimant also followed the employer's instructions each time they requested a new doctor's note. On August 15, 2017, when claimant returned to work with a doctor's note that released him to return to work with no restrictions, the employer told him he was discharged.

Claimant properly reported each absence after he was injured on May 29, 2017. The employer failed to meet its burden of proof in establishing disqualifying job misconduct. Benefits are allowed.

DECISION:

The August 30, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs