IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

SCOTT L LEUTZINGER Claimant **GLEN HAVEN HOME** Employer	**APPEAL 15A-UI-00727-KCT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 12/21/14** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 8, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 9, 2015. The claimant participated. The employer did not register, as provided in the hearing notice, and did not participate or provide documentary evidence at hearing.

ISSUE:

Was the claimant discharged for disqualifying misconduct in connection with his employment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a maintenance worker for Glen Haven Home. He was separated from employment on December 18, 2014, when he reported for work. The claimant's daily schedule was from 8:00 a.m. to 4:30 p.m., Monday through Friday.

On December 17, 2014, the claimant requested and received oral permission from his supervisor, John Logan, to leave at noon that day to take his wife to the hospital. Logan gave his verbal permission in the presence of fellow employee Lee Bacam. The claimant was not required to complete a written request. He did not request personal time off with pay. He understood he would not be paid for the time off. Logan told the claimant that he had to complete his project, involving touch-up painting and putting away his tools, before leaving early. The claimant completed those tasks and sought out his supervisor before he left. Logan was unavailable when the claimant clocked out after 12:00 p.m. Bacam was present and acknowledged that he knew the claimant was taking the afternoon off and that Logan had approved the absence.

On December 18, 2014, the claimant presented for work at his usual time. He encountered Logan who informed him that the new administrator decided that he should be discharged immediately due to his absence on December 17, 2014. The claimant asked if he should speak

to her. Logan told the claimant not to talk to the administrator because he might "make a scene" and then require a police escort off the property. The claimant has no history of "making a scene" with the employer. Based on his supervisor's directive, the claimant clocked off and left the premises without incident or an escort. He turned in his keys when he picked up his check from Logan. He did not enter the employer's premises after December 18, 2014.

The claimant had received a warning about unexcused tardiness in November 2014. The consequence of future unexcused tardiness could lead to termination. On December 17, 2104, the claimant understood that he had his direct supervisor's permission, after his tasks were complete, to take his wife to the hospital. The verbal request was made and granted in the presence of another employee.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

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). Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper, supra.*

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, employer incurs

potential liability for unemployment insurance benefits related to that separation. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act.

The employer provided no testimony or documentary evidence at hearing. Since the employer did not provide evidence at the hearing of its policy or any testimony to refute the claimant's statement about his supervisor granting his request for leave, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The January 8, 2015, (reference 01) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Kristin A. Collinson
Administrative Law Judge

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Decision Dated and Mailed

kac/pjs