IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JAMES A PRUETT
Claimant

ALFAGOMMA AMERICA INC
Employer

APPEAL NO. 14A-UI-12125-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/26/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

James Pruett (claimant) appealed a representative's November 13, 2014 (reference 02) decision that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Alfagomma America (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 9, 2014. The claimant participated personally. The employer participated by Kris Adam, Accounting Human Resources Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 2, 2014 as a full-time tube assembly worker working as a welder. The claimant worked for employer prior to August 2, 2014 through a temporary agency. The claimant signed for receipt of the employer's handbook. The handbook indicates an employee will be terminated after accumulating six attendance points. The employer told the claimant that his absences during his temporary employment would count in his attendance point total. The claimant was absent two to four times during his temporary employment. All the absences were due to medical issues, properly reported, and the claimant provided the employer with notes from his physician.

The claimant was absent due to a medical problem and properly reported his absence on August 21, 26, September 2, and 10, 2014. He provided the employer with doctor's excuses for the days he was absent. The claimant told the employer he needed two surgeries. The employer told the claimant it would work with him. He was to let the employer know he was sick and the employer would excuse him. Instead the employer issued the claimant a written warning and three day suspension for absenteeism.

On September 23, 2014 the claimant properly reported to the employer he would be late for work because he was at the emergency room. On October 27, 2014 the claimant was up until 3:00 a.m. in preparation for his surgery that was to take place on October 30, 2014. He then fell asleep and did not wake up in time to be at work at 5:00 a.m. When he arrived at work, the employer terminated him for having accumulated five attendance points during his employment with the employer and another point prior to his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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(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(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

In this case all the claimant's absences were properly reported medical issues except for the final incident. This one final incident of tardiness cannot be considered excessive. The employer has failed to provide any evidence of willful and deliberate misconduct. The claimant was discharged but there was no misconduct.

DECISION:

The representative's November 13, 2014 (reference 02) decision is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

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