IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

DAVID WEST
Claimant

HORMEL FOODS CORPORATION
Employer

APPEAL NO. 19A-UI-02446-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/03/19
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

David West (claimant) appealed a representative's March 20, 2019, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Hormel Foods (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 8, 2019. The claimant participated personally through Maria Rivadeneya, Interpreter. The claimant's wife, Rosa Maria Perez, also testified for the claimant. The employer was represented by Beverly Maez, Hearings Representative, and participated by Eizabeth Dean, Human Resources and Safety Manager. The employer offered and Exhibit 1 was received into evidence.

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 February 14, 2017, as a full-time dice totes. Spanish is the claimant's first language. On January 3, 2019, the claimant provided the employer with a doctor's note excusing him from work through February 5, 2019.

On January 14, 2019, the employer gave the claimant Family Medical Leave (FMLA) paperwork to complete for his absence. The claimant took the documents to his physician. On January 16, 2019, the physician completed the documents indicating the claimant could not work for a continuous period from January 3 through March 4, 2019. No patient follow treatment, recovery time, or periodic time off for flare-ups was indicated. The person in the doctor's office who normally completes the FMLA paperwork was away from the office and a new person filled out the documents for the doctor's signature on January 16, 2019. The absence was needed for "urgent counseling". The papers were provided to the employer.

On January 14, 2019, the employer called and left a message for the claimant. The claimant's wife returned the call and gave a new telephone number. On February 1, 2019, the employer spoke with the claimant's wife about the claimant's request for FMLA, even though his doctor

listed his absence due to “marital discord”. The employer told the claimant’s wife that the paperwork had to be more complete.

On February 4, 2019, the employer spoke with the claimant and his wife on the telephone about the FMLA paperwork. On February 6, 2019, the claimant provided the employer with the FMLA paperwork but it had no corrections. On February 7, 2019, the employer sent the claimant a certified letter in English asking for corrections to the physician’s portion of the form within seven days. The doctor signed again on February 8 and on February 9, 2019, the claimant provided the FMLA paperwork to the employer. The employer did not notify the claimant there was still a problem.

On February 26, 2019, the employer sent the claimant a letter in English stating he did not qualify for FMLA based on his doctor’s medical documentation. As a result, he was terminated for excessive absenteeism.

The claimant was released to return to work without restrictions on March 4, 2019. He filed for unemployment insurance benefits with an effective date of March 3, 2019.

REASONING AND CONCLUSIONS OF LAW:

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

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(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 employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a properly reported condition that was excused by a medical doctor from January 3 to March 4, 2019. The claimant's medical absence does not amount to job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's March 20, 2019, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs