IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANTHONY S STEINBACH
Claimant

CARGILL MEAT SOLUTIONS CORP
Employer

APPEAL NO: 13A-UI-01336-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/06/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Anthony S. Steinbach (claimant) appealed a representative's January 31, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Cargill Meat Solutions Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 6, 2013. The claimant participated in the hearing and was represented by union representative Tim Martin. The employer received the hearing notice and responded by calling the Appeals Section on March 1, 2013. The employer indicated that Angie Stevens would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, Ms. Stevens was not available; therefore, the employer did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on August 7, 2007. He worked full time as a defatter in the ham bone department of the employer's Ottumwa, Iowa pork processing facility. His last day of work was May 18, 2012.

The claimant had gone on FMLA (Family Medical Leave) as of January 22, 2012 due to a non-work-related back injury. He initially sought to return to work for a day or two in about March 2012, but it was determined that the claimant was not sufficiently healed, so he returned to the FMLA status. Each week he would be assessed by his doctor and would inform the employer as to whether the doctor was releasing him to return to work the next week or not.

The claimant was then released by his doctor and returned to work on or about May 13, 2012. On Friday, May 18 the claimant was brought into a meeting with a human resources representative; he had a union representative with him in that meeting. The human resources representative told him that there was a day in March or April that the claimant had not separately called in to confirm he would not be in to work that day, and that as a result he would be considered "pointed out" under the employer's attendance program and would be discharged. The claimant maintained that he had called in each day he was absent. The human resources representative told the claimant that he would be given until Monday, May 21 to provide written proof that he had called in on the day in question, and that if he failed to do so, the termination would stand.

The claimant sought to obtain documentation from his phone service to prove that he had called in on the day in question, but he then learned that even if he paid for the documentation to be provided, the paperwork could not be provided by May 21, but would be several weeks. As the claimant understood that he was discharged if he did not provide the documentation by May 21, when he was unable to provide the documentation by that date he understood that he was discharged. Upon advice from his union representative the claimant did not return to work on or after May 21, but began calling in absences again, awaiting paperwork to come from the employer confirming he was discharged. The employer did not process separation paperwork until about November 2012 when the claimant finally ceased calling in absences.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); *Cosper*, supra; *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007). In this case, the employer asserted that the reason for the day of absence which would have caused the claimant to have "pointed out" was not properly reported. However, the claimant's testimony that he did call in each day is uncontroverted. Further, because of the existing FMLA and the claimant's weekly report as to his medical status for the next week the employer knew or should have known that the claimant would be absent for the time in question. *Floyd v. Iowa Dept. of Job Service*, 338 N.W.2d 536 (Iowa App. 1986). Therefore, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. The employer has failed to meet its burden to establish misconduct. *Cosper*, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's January 31, 2013 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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