IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BRYON D AGEE
Claimant

TJ & ME INC
Employer

APPEAL NO. 07A-UI-08476-S2

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/05/07 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Bryon Agee (claimant) appealed a representative's August 30, 2007 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with TJ & Me (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for October 9, 2007, in Des Moines, Iowa. The hearing took place in person on October 9 and 18, 2007. The hearing was completed by telephone conference call on October 30, 2007. The claimant was represented by Steven Lombardi, Attorney at Law, and participated personally. The claimant's wife, Vicki Agee, observed the hearing. The employer was represented by Joseph Nugent, Attorney at Law, and participated by Mike Nelson, Owner/Operator; Teri Nelson, Owner/Operator; Jason Sherod, Assistant Manager; Peter Grochala, Store Manager; Jerry McCauley, Physician; and Tracey Neighbors, Front Desk Lead. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibits One and Two were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

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 in April of 2002, as a full-time maintenance employee.

On April 2, 2007, the claimant injured his back at work by operating an air jack hammer. The claimant reported the injury to the employer immediately and was unable to work after the injury. On or about April 9, 2007, the claimant sought medical treatment from his physician. His physician restricted him from working until further notice. After the claimant's wife spoke to a State of Iowa employee and requested the workers' compensation forms from the employer, the employer filed the claim in May 2007.

On June 6, 2007, Dr. McCauley, the employer's physician, issued work restrictions for the claimant. (Exhibit A1). On June 12, 2007, Dr. McCauley signed off on a list of duties the

employer thought the claimant could perform. (Exhibit A2). On June 27, 2007, the insurance company's front desk lead wrote the claimant a letter indicating the claimant was expected to return to work on July 2, 2007. (Exhibit A3). On June 28, 2007, Dr. Ingram indicated the claimant should not perform four jobs on the list of job duties the employer created and Dr. McCauley approved. (Exhibit A4 and A5).

On July 2, 2007, the employer met with the claimant and asked him to sign a statement indicating that if he violated his work restrictions he would jeopardize his healing and his worker's compensation claim. The work restrictions indicated he would return to work on June 6, 2007. The signature line indicated "Byron D. Agee." (Exhibit A1). He was also asked to sign a list work duties, a schedule, rules and commitment to make all his doctor's appointments on his day off. The document inferred the claimant would not be allowed to have his work-related medical appointments during his work time. (Exhibit 2). The employer told the claimant he had to sign the documents or he could not return to work.

At the time the employer wanted the claimant to sign the paperwork, there were restrictions from Dr. McCauley, Dr. Evans and Dr. Ingram. Dr. Evans had not returned the claimant to work. Dr. McCauley returned the claimant to work on June 6, 2007. (Exhibit A1). The insurance company told the claimant to return to work on July 2, 2007. (Exhibit A3). The claimant was confused and told the employer he would not sign the document because he needed another medical appointment before he returned to work.

On July 3, 2007, Dr. Rivera saw the claimant and issued revised restrictions. (Exhibit A6) Those restrictions were sent to the insurance carrier, the employer's agent. The employer did not revise its document to mirror the physician's instructions. The claimant could not sign the out-of-date document without legal risk. On July 8, 2007, the employer sent the claimant a letter informing him that he abandoned his job. (Exhibit A7 and A8).

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:
>
> 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.

871 IAC 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The grounds for discharge listed under a contract of hire are irrelevant to determination of eligibility for Job Service benefits in a misconduct situation. Hurtado v. Iowa Department of Job Services, 393 N.W.2d 309 (Iowa 1986). A business has a right to protect itself and expect employees to follow instructions in the performance of the job. A claimant also has a right to protect his legal interests. A problem occurs when one party does not respect the other's rights. In this case it was reasonable to ask the claimant not to perform work outside of his restrictions. It was not reasonable of the employer to list out-of-date restrictions or restrictions that were not the same as the ones given by the physician.

The employer argues that the restrictions it concocted were more restrictive than the physician's restrictions. This leads one to believe that if the claimant violated the medical restrictions thought up by the employer, adverse consequences could follow. An employer can terminate an employee for any number of reasons. Those reasons are not relevant to whether an employee is eligible for unemployment insurance benefits.

The employer terminated the claimant for failure to sign two documents. The claimant refused to sign documents that were not an accurate reflection of his restrictions. The employer would not allow the claimant to return unless he signed the inaccurate documents. The separation was not voluntary. The employer has not provided sufficient evidence of job-related misconduct. Benefits are allowed.

DECISION:

The representative's August 30, 2007 decision (reference 02) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

_____
Beth A. Scheetz
Administrative Law Judge

_____
Decision Dated and Mailed

bas/css