

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY A MARSHALL

Claimant

APPEAL NO: 12A-UI-03556-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAWN MANUFACTURING INC

Employer

OC: 02/26/12

Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 2, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. Jamie Badger, the director of loss control, and Mark Donahue appeared on the employer's behalf. During the hearing, Claimant Exhibits A through D and Employer Exhibit One were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment of reasons that qualify him to receive benefits or did the employer discharge him for reasons that constitute work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in January 2011 as a full-time painter. The claimant understood that when an employee did not feel well and needed to leave work early, the employer required the employee to talk to a supervisor before the employee left work.

On February 20, the claimant started getting a migraine headache at work. He did not feel well. The claimant took some Ibuprofen. He talked to Mark, the lead man, who suggested that the claimant sit in the break room where it was dark so he could relax. The claimant's migraine became worse. He went to his supervisor's desk, but he was not there. The claimant he did not know where his supervisor was at. The claimant started feeling so ill, he left before lunch. When he left he did not tell anyone he was leaving, did not punch out and drove himself home, about a mile from work.

The claimant's migraine intensified to the point that he asked a neighbor to take him the emergency room. The emergency room doctor gave him a doctor's statement that excused him from work for the rest of February 20 and 21. (Claimant Exhibit A.) The claimant was also told to have his personal physician examine him to release him to return to work. The claimant received pain medication in the emergency room that let him sleep. The claimant was released from the emergency room later on February 20.

On February 21, 2012, the claimant called the attendance answering machine at 4:40 a.m. to report he had a note from the emergency room doctor. When the claimant talked to Badger that afternoon, Badger told him that the employer considered him to have abandoned his job the day before and the claimant no longer worked for the employer. After the claimant explained what had happened, a meeting was scheduled for 9:00 .m. the next day. The claimant would then bring in his documentation to see if his continued employment could be worked out.

After talking to the employer on February 21, the claimant called for a doctor's appointment and learned he needed to be at the clinic the next morning by 8:00 a.m. The claimant assumed he would be in and out of the clinic to get a work release and would easily make the 9:00 a.m. meeting. The claimant wanted to see the doctor before the meeting so he could give the employer a doctor's release so the claimant could return to work. Instead of being released to return to work, an ambulance took the claimant back to the hospital. The claimant called and left a message for the employer as soon as he got back his cell phone, which was late afternoon on February 22. On February 23, the employer knew the claimant was in the hospital. The claimant was released from the hospital on February 26.

On February 27, 2012, the claimant went to the workplace to get FMLA paperwork to take with him to his doctor's appointment that day. The employer gave the claimant the requested paperwork but did not consider the claimant an employee because he had abandoned his job on February 20 and had not met with the employer on February 22 as scheduled.

The claimant called the employer the next day, February 28, and a meeting was scheduled at 10:00 a.m. on February 29, 2012. The purpose of the meeting was to discuss the possibility of the claimant returning to work after he provided the employer with his medical documents. A few minutes after the meeting had been arranged, the claimant call back and rescheduled the meeting to March 1. The claimant could not commit to a time because he was not at his home. The claimant's physician released him to return to work on February 29, 2012. (Claimant Exhibit B.)

The employer had no record of the claimant calling or leaving any messages for Badger until March 2. Badger was out of town on March 2, so the claimant left a message for Badger to call him. On March 5, the claimant called the employer again in an attempt to schedule a meeting so the claimant could present his medical documentation to the employer. Badger was busy and asked the claimant to call back in five minutes. The claimant responded that it would be better with Badger's schedule for him to call the claimant back when he, Badger, was not busy. The two men did not have any further communication.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The facts establish that when the claimant talked to the employer on February 21, the employer no longer considered him an employee. The phone calls and meetings scheduled after February 21 were an attempt by the claimant and employer for the claimant to show the employer documentation. The employer would then decide if the claimant's employment separation would be changed or he would remain terminated. Since the two parties did not get together, the claimant's employment ended on February 20 when he left work early without authorization.

The facts do not establish that the claimant intended to quit when he left work early on February 20. He left work because he did not feel well and his migraine headache was getting worse. The claimant knew and understood that the employer required employees to talk to a supervisor before leaving work. The claimant went to the supervisor's desk, but the supervisor

was not there and the claimant did not know where he was. Instead, of taking time to look for the supervisor the claimant left work without permission and without punching out.

The employer considered this an event that violated the employer's policy. As a result of violating the employer's policy, the employer ended the claimant's employment as of February 20 even though the claimant explained what happened the next day. For unemployment insurance purposes, the employer initiated the employment separation and discharged the claimant.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

On February 20, the claimant was not thinking when he left work early. As a result of the migraine headache he had, he used poor judgment when he left work and drove himself home. After the claimant was treated at the emergency room and he was able to think, he called the attendance line the next morning and talked to Badger the afternoon of February 21. Even though the employer had justifiable business reasons for ending the claimant's employment on February 20 after he left work without notifying anyone, the claimant did not commit work-connected misconduct. As a result of the medical issues he experienced on February 20 and 22, he did not intentionally disregard the employer's interests. As of February 26, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's April 2, 2012 determination (reference 01) is reversed. The claimant did not voluntarily quit his employment. The employer discharged the claimant for business reasons when the claimant violated a policy and left work early without authorization on February 20, 2012. The claimant did not commit work-connected misconduct. As of February 26, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css