IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JEFFREY MCLAUGHLIN Claimant **ABCM CORPORATION** Employer	**APPEAL 16A-UI-05004-NM-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/10/16** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 28, 2016 (reference 01) unemployment insurance decision that denied benefits based upon his discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on May 13, 2016. The claimant, Jeffrey McLaughlin, participated and testified. The employer, ABCM Corporation, participated through corporate therapy consultant Betsy Englebarts.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an occupational therapist from October 31, 2012 until this employment ended on April 12, 2016, when he was discharged.

On April 8, 2016, claimant did not have any patients scheduled or work to complete, so he did not go in to work that day. The previous evening claimant told the lead at the facility where he was working, but not his team lead, that he would not be in the next day. The employer's attendance policy directs employees to notify a team lead or member of management if they are not going to be in to work for any reason, though employees do have very flexible hours. The employer testified the individual at the facility that claimant spoke to is not a team lead or member of management. Claimant testified he believed he was telling the appropriate person because she was the employee who was always present at that site and in charge of doing the scheduling for the site. Claimant had followed the same procedure several times in the past and had never been advised that he was not following proper procedure. Throughout the day on April 8, 2016, claimant and his team lead exchanged several text messages regarding some intakes that had come in that day. Claimant did not mention anything during these text exchanges about not being at work that day. Claimant testified this was because he assumed his team lead knew he was not at work.

The following Monday, April 11, 2016, the employer discovered claimant was not at work the previous Friday, April 8. The employer made this discovery when it found the intakes that claimant's team lead had been texting him about were not completed. Time records showed that claimant did not clock in and was not paid for any work done of April 8. The employee handbook states one no-call/no-show is grounds for immediate dismissal. In accordance with this policy claimant was notified the following day, April 12, 2016, that his employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.
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> 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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The claimant was discharged from employment when the employer discovered he had not come into work one day and did not notify his team lead or a member of management that he would not be at work. Claimant did notify the facility lead, as he had done without incident several times before. Since no one had corrected this behavior before, claimant was reasonable in believing that he was following proper procedure. There is no indication that the claimant acted deliberately, as a check of his time records would clearly show the employer he was not at work that day.

The conduct for which claimant was discharged was merely an isolated incident regarding a misunderstanding of the employer's policy. The claimant had engaged in similar behavior and followed a similar procedure in the past without repercussion. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

DECISION:

The April 28, 2016 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Nicole Merrill
Administrative Law Judge

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Decision Dated and Mailed

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