IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

FRANCIS J THOMAS
Claimant

PERFORMANCE FABRICATION INC
Employer

APPEAL NO. 09A-UI-01557-DT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 12/28/08
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Francis J. Thomas (claimant) appealed a representative's January 29, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Performance Fabrication, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 19, 2009. The claimant participated in the hearing. Chris Schreyer appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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?

FINDINGS OF FACT:

The claimant started working for the employer on or about August 30, 2006. He worked full time as a laborer in the employer's welding and metal working business. His normal schedule was Monday through Friday, 7:00 a.m. to 3:30 p.m. His last day of work was December 30, 2008. The employer discharged him on that date. The reason asserted for the discharge was excessive absenteeism.

The claimant had various absences in 2008 prior to November, but records were not kept on those occurrences. In November and December 2008, prior to December 16, the claimant had 14 absences. Ten of these were due to personal illness, but four were due to the illness of his six-year-old son. As a result of these absences, on December 16 the claimant was given discipline including a 90-day probation; if he had another unexcused absence during that period, he was subject to discharge.

On December 24 was in briefly for work. However, as it was Christmas Eve and the employer did not have a great deal of work that it wanted to get started but not finished, Mr. Schreyer told the claimant he could leave. He told the claimant to call in and check about work on Friday, December 26. The claimant misunderstood him and thought that Mr. Schreyer would call him if

he was needed to come in on the day after Christmas. He further interpreted Mr. Schreyer as also indicating that he would let the claimant know if he was needed on Monday, December 29. As a result, the claimant did not call or report for work on either day. He then proceeded to report for work on Tuesday, December 30. While Mr. Schreyer was willing to overlook the absence on December 26, he found no justification for the claimant's absence on December 29, as there had been no discussion with any staff as to any possibility of there being work on that Monday, and all other staff reported as scheduled. Given that the claimant was on probation for his attendance, the employer then discharged the claimant.

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); Iowa Code § 96.5-2-a.

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 that 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 that 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).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). Absenteeism arising out of matters of purely personal responsibility, specifically including care of a sick child other than possibility an infant or toddler, is not excusable. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984); McCourtney v. Imprimis Technology, Inc., 465 N.W.2d 721 (Minn. App. 1991; Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The claimant had excessive unexcused absences before December 29, and his final absence on December 29 was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future absences could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's January 9, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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