IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MATTHEW J PAULS Claimant **TRINITY REGIONAL MEDICAL CENTER** Employer	**APPEAL 15A-UI-07531-CL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/14/15** **Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the June 26, 2015, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 13, 2015. Claimant participated. Employer participated through human resource manager Ted Vaughn, food service manager Nic Lucart, and supervisor of nutritional services Andrea Grimsley. Department's Exhibits D-1 through D-11 were received.

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 a cook from October 21, 2013, and was separated from employment on June 16, 2015, when he was terminated.

Claimant received a written warning regarding attendance and work performance on March 30, 2015. Claimant had not been wearing gloves or properly washing his hands. Claimant failed to clean his work station properly and was not properly documenting food temperatures. Claimant was warned if his performance did not improve he would face further disciplinary action.
On April 2, 2015, claimant was suspended for three days for being late or leaving early on 16 occasions and being absent four times since January 2015. Claimant was also warned about his work performance. Claimant had a tendency to leave his work area without informing his supervisor, left his work area dirty, and was still not properly documenting food temperatures. Claimant was told if he was going to report late or absent, he needed to call the phone in the diet office. Claimant was warned any further performance issues would lead to termination.

On May 11, 2015, claimant was absent. He left a voice message stating he was sick.

On May 29, 2015, manager Nic Lucart warned claimant that he needed to obtain non-slip work shoes by the end of that work week or pay period. Claimant did so.

Claimant was in a vehicle accident on June 10, 2015. Initially, claimant did not believe he was hurt. The next day, June 11, 2015, claimant began feeling sore. That evening, at approximately 8:49 p.m., claimant called the diet office and left a voice message stating he had been in a car accident and would not be at work the next morning. Claimant also called manager Nic Lucart, but he did not answer. Claimant was absent from work on Friday, June 12, 2015. That evening, claimant went to the emergency room. Claimant was prescribed pain medication. Claimant asked a co-worker to work for him the next day, Saturday, June 13, 2015. Claimant called the diet office phone that evening and left a voice message stating he found someone to work for him the next morning. On Saturday, June 13, 2015, claimant was absent. However, his co-worker filled in for him. Claimant worked on Sunday, June 14, 2015, without incident.

Claimant was terminated on June 16, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged 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.
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> 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.

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).

Iowa Admin. Code r. 871-24.32(7) provides:

> (7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

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 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Employer claims the events leading to claimant's termination include his failure to obtain non-slip work shoes, absences on June 12 and 13, 2015, and work performance issues on June 14, 2015.

Claimant obtained non-slip work shoes as directed.

Employer failed to prove claimant had any work performance issues on June 14, 2015. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in *Crosser*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand witnesses, the administrative law judge concludes that the employer has not met its burden of proof. It is permissible to infer that witnesses with firsthand knowledge did not testify because they would not have been supportive of employer's position. See, *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

Finally, because claimant's last absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct. Employer claimed it had a policy of requiring a doctor's note for all health-related absences and claimant failed to bring such a note. However, employer provided no evidence of such a written policy and claimant credibly testified he had never been asked to provide such documentation. Employer asserts claimant did not properly report his absences, but claimant presented evidence he called the diet office as directed and additionally called his supervisor. Claimant also found a replacement for his shift on June 13, 2015. No evidence suggests claimant was not actually hurt in a car accident justifying his absences on June 12 and 13, 2015. Thus, his absences were excused under the law. The employer has not established a current or final act of misconduct in regard to absenteeism, and, without such, the history of other incidents of absenteeism need not be examined.

DECISION:

The June 26, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Christine A. Louis
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Decision Dated and Mailed

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