

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TIMMY G CLELAND
Claimant

APPEAL NO: 19A-UI-07475-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 09/01/19
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 20, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 14, 2019. The claimant participated in the hearing. Chris Muhlbauer, Shift Supervisor and Mark Austin, Distribution Center Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time warehouse heavy duty for Casey's Marketing Company from October 14, 2013 to September 4, 2019. He was discharged for failing to return to work after being released by his physician for a non-work related illness.

The claimant suffers from anxiety and depression and after being off work on FMLA for several weeks his physician released him to return to work without restrictions August 19, 2019. The claimant called August 18, 2019, and said he needed bereavement leave because his aunt died. He stated he would be in August 19, 2019, to speak to Chris Muhlbauer, Shift Supervisor and Mark Austin, Distribution Center Manager. On August 19, 2019, he called and said he would be gone through August 21, 2019 because he had "family things going on" and his aunt's funeral August 20, 2019, despite the fact the employer allows one day for bereavement. On August 20, 2019, he called and said he would be gone that day to attend his aunt's funeral. On August 21, 2019, he called and told the employer he was unavailable to work that day but did not provide a reason. On August 25, 2019, he called and said another family member, his uncle, died. On August 26, 2019, he called in and stated he was using FMLA which was his last remaining day of FMLA. On August 27, 2019, the claimant called in and said he would not be in but would bring updated paperwork from his physician but never provided any new information from his doctor. On August 28, 2019, he called and said he was going to the doctor to get release paperwork. On September 1, 2019, he said he would be in and try to work the following

day. On September 2, 2019, the claimant called and said he was having more issues and was getting cleaned up. On September 3, 2019, he called and said he would not be in but would call later to let the employer know what was going on. He called later that day but Mr. Muhlbauer was away from his desk. On September 4, 2019, the claimant called and said he would not be in and the employer made the decision to terminate the claimant's employment. Mr. Muhlbauer and Mr. Austin called the claimant that afternoon and notified him it was terminating his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from

receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant was released without restrictions August 18, 2019, but did not report to work after that day or provide any doctor's notes covering his absence from August 18 through September 4, 2019. While the claimant did call in to report his absences, again because he was released by his physician without any restrictions, he had an obligation to return to work August 19, 2019. He had exhausted his FMLA, sick leave and vacation time and without a doctor's note provided to the employer his absences were unexcused because the last communication the employer received from the claimant's health care provider released him to return to work without restrictions.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The September 20, 2019, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn