IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

BRETT A ANTHONY Claimant **FLEXSTEEL INDUSTRIES INC** Employer	**APPEAL 15A-UI-13188-JCT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 11/01/15** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 24, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on December 17, 2015. The claimant participated personally. The employer participated through Donna Backes, human resources. Charlene Franke also participated for the employer. Employer Exhibits 4 and 5, and Claimant Exhibit A were admitted into evidence.

ISSUE:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a press operator and was separated from employment on September 22, 2015

On September 17, 2015, the claimant left work early due to receiving a call that he needed to be interviewed by law enforcement following a domestic violence incident from the prior day. Ms. Backes approved the claimant's leaving his shift early. On September 18, 2015, the claimant called off work because he tried to take his son to daycare, only to learn he would not be accepted without certain documentation. On September 19 and 20, the claimant did not work because he was on prescheduled vacation. On September 21, 2015, while working, the claimant had what he described as a nervous breakdown and began crying. Management and human resources were unavailable as they were in meeting, and the claimant went to Roxanne, a payroll clerk, to notify her that he needed to leave. The claimant had previously contacted Roxanne when other management was unavailable to authorize an absence, and had not been disciplined for it, nor did Roxanne indicate she could not authorize him to leave. The claimant clocked out and went to the doctor. On September 22, 2015, the claimant called and left a

voicemail for the employer on the required hotline, to state he was sick. The employer denied receipt of the voicemail. His doctor excused him from work from September 21 through 23 (Claimant Exhibit A).

The employer's policies provide that early leaves during a shift must be approved by an employee's supervisor and failure to receive permission will be viewed as a voluntary quit and the result will be in termination of employment (Employer Exhibit 5, page 2). The employer has an attendance policy which applies point values to attendance infractions, including absences and tardies, regardless of reason for the infraction. The policy also provides that an employee will be discharged upon receiving six points. The claimant was made aware of the employer's policy at the time of hire. The employer asserted that it did not discharge the claimant for attendance but that if the claimant had called off on the 22nd and even with a doctor's note, he would have "pointed out" for attendance. However, the employer contended that did not happen because he voluntarily quit first by abandoning his shift on September 21. The claimant learned on September 23, 2015 through other employees that he had been fired and therefore did not present the doctor's note to the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit, but was discharged from employment for no disqualifying reason.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). In this case, the claimant did not have the option of remaining employed nor did he express intent to terminate the employment relationship. The claimant sought permission to leave early on September 21, 2015, from an available payroll administrator while suffering from a nervous breakdown in the workplace, and when management and human resources were unavailable. There was no evidence that the claimant did not intend to work, as evidenced by his call in to the attendance hotline the following day to report he would be off work due to illness. The employer's policy may state that it will be viewed as a quit when someone leaves a shift without permission, but for unemployment benefit purposes, where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

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:
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> 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(4) provides:

> (4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 substantial and 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.*. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id*. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer has not met its burden of proof to establish a current or final act of misconduct, and, without such, the history of other incidents need not be examined.

The claimant did not intentionally abandon his shift, when he notified the payroll clerk that he needed to leave to go to a doctor, when management and human resources were in a meeting. Given the urgency of the matter, and the claimant having a breakdown while performing his work, the claimant's actions may not have been in compliance with the employer's policies but were reasonable under the circumstances. Here, the claimant had previously been granted permission by Roxanne when others were unavailable and not issued discipline or even advised by Roxanne that she lacked authority to help him. At most, the conduct for which the claimant was discharged was merely an isolated incident of poor judgment and inasmuch as the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. 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.

Further, it cannot be ignored that even if the employer did not consider the claimant's absence on September 21, 2015 as unexcused for leaving early, by way of the employer's own testimony, the claimant would have "pointed out" in attendance occurrences and would have been discharged. Either way, the employer has failed to prove the claimant's actions were misconduct. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

DECISION:

The November 24, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

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Jennifer L. Coe
Administrative Law Judge

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Decision Dated and Mailed

jlc/pjs