

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW CHRISTIAN
Claimant

APPEAL NO: 12A-UI-12042-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC
Employer

OC: 08/26/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Andrew Christian (claimant) appealed an unemployment insurance decision dated September 27, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Schenker Logistics, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 26, 2012. The claimant participated in the hearing. The employer participated through Nicki Brick, Human Resources Manager and Joel Shenefield, Case Pick Operations Manager. 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:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed from December 31, 2006 through August 27, 2012 and was most recently working as a full-time case pick operations supervisor. He worked in the distribution side of this logistics business which warehouses and distributes Proctor and Gamble products. The claimant and a co-employee supervised 60 employees and he worked 7 out of 14 days on a rotating schedule from 6:00 a.m. to 6:00 p.m. He was discharged after he walked off his shift on August 22, 2012 at approximately 12:30 p.m.

The employer had been preparing for a large profile tour that afternoon from Proctor and Gamble upper management employees and the claimant was the only supervisor on duty. Shortly before leaving, he became upset when Case Pick Operations Manager Joel Shenefield told him that one of his vacation days was being used to cover an unscheduled absence around July 4, 2012. The claimant had a medical excuse to cover that date but refused to provide that excuse after repeated requests for him to do so.

The claimant subsequently told Mr. Shenefield that he was leaving for a family emergency. He did not say why he needed to leave or what the family emergency was but merely announced that he was leaving. The claimant went to change and before he left, Mr. Shenefield approached him and told him that it was not in his best interest to leave and that he was putting his job in jeopardy, but the claimant left anyway.

The employer subsequently learned that the claimant told his line lead that he would be back in a couple hours, but he never called the employer and never returned. He was not scheduled to return to work until Saturday August 25, 2012. Human Resources Manager Nicki Brick called the claimant in on August 24, 2012 to try to find out what happened. He told her that he had to leave on August 22, 2012 to go pick up his wife after a doctor's appointment because she was locked out of her car at the clinic. The claimant provided a medical excuse from an ob-gyn clinic in Coralville. Ms. Brick suspended the claimant that day and General Manager Greg Smidt discharged him on August 27, 2012.

During the hearing, the claimant testified that he had to leave work on August 22, 2012 because his wife was "threatening to have a miscarriage" and that she was "admitted to the hospital." He testified he presented documentation to the employer confirming his wife was admitted to the hospital but Ms. Brick denied this claim and said this was the first time she heard this allegation. Ms. Brick did admit that the claimant had shared previous medical concerns of a miscarriage and that Mr. Shenefield had worked with the claimant regarding time off for these medical reasons. The claimant's appeal letter states, "My wife was at the doctor due to a high risk pregnancy. We have suffered two miscarriages within the last year so her wellbeing was my main concern."

REASONING AND CONCLUSIONS OF LAW:

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

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.

871 IAC 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.

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on August 27, 2012 for job abandonment. The evidence confirms that he left work for a non-emergency and could have returned but opted not to do so. The claimant denies he was told his job was in jeopardy before he left but claims that he was told to present a doctor's statement upon his return. However, he has proven to be an unreliable witness due to inconsistent statements and both parties agree that he never told the employer why he was leaving on August 22, 2012. If he never mentioned he was leaving for medical reasons, it is not plausible that the employer would have told him to present a doctor's note upon his return. The claimant's conduct demonstrates an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated September 27, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css