IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

STEPHEN PAYNE
Claimant

RJK INC
Employer

APPEAL NO: 12A-UI-11992-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09-09-12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 26, 2012, 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 31, 2012. The claimant participated in the hearing. Mike Thomas, account 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 production laborer for RJK, assigned solely to GPC in a permanent position from February 3, 2009 to September 10, 2012. Employees earn time off (ETO) after working around 1800 hours after three years of service and receive two weeks of ETO at that time. On the claimant's second anniversary date, he received a 50 cent per hour raise. On his third anniversary date, he was paid for 80 hours of ETO and immediately upon receiving that payment the claimant's wife purchased nonrefundable airline tickets and made payment to stay in a condominium in North Carolina the week of September 3, 2012.

The claimant felt he was being harassed by his supervisor in 2011 and voluntarily quit his job February 24, 2011. He was notified that the supervisor retired and he could return to his job and did so March 14, 2011. Unbeknownst to the claimant, he had to start over on his ETO at that time. Consequently, although the employer's client paid the claimant for two weeks of ETO because he accumulated three years' service, and had issued him a 50 cent raise after two years of service, he believed he had two weeks of ETO beginning on his anniversary date, when in fact the employer's client determined he did not have enough ETO to take his planned and prepaid vacation because his anniversary date now reverted to the date he returned after voluntarily leaving for three weeks in 2011.

The claimant talked to his supervisor about the vacation situation and he told the claimant to take his vacation but call in and it would be "okay." The claimant's supervisor said the claimant would only receive a verbal or written warning and that "it had been done before" under similar circumstances. The claimant only had two absences during his tenure with the employer; one due to illness and one due to a snowstorm that effectively shut down the plant. He had not received any verbal or written warnings while working for the employer.

On September 3, 2012, the claimant called the employer and stated he had a family emergency and would be out of town for the week. When the claimant returned to work September 10, 2012, following his vacation, the employer terminated his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 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 of proving disqualifying misconduct. 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). While the claimant was not completely forthcoming with the client and employer about the reason for his absence the week of September 3, 2012, he sincerely believed he had earned enough ETO to take his prepaid and preplanned vacation the week of September 3, 2012. He came about that belief honestly, however, because the client gave him a raise of 50 cents per hour on his two year anniversary and paid him for 80 hours of ETO on his three year anniversary date. The claimant had quit for three weeks in February/March 2011 but because he continued to receive the benefits due on his original anniversary date, he had no reason to believe his benefits started over after the three weeks he quit in 2011. Because the employer gave him his raise after his two year anniversary and paid him for two weeks of ETO after his three year anniversary, the claimant relied on the employer's actions in making plans for a vacation for which he could not get a refund on plane fare or the condominium he reserved. Because the claimant reasonably relied on the employer's actions in making his vacation plans and then was placed in an untenable position of having to decide whether to call in and effectively be dishonest with the employer or lose a great deal of money by cancelling his vacation, the administrative law judge concludes the claimant's actions, which were an isolated incident, do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The September 26, 2012, reference 01, 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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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/kjw