IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 05A-UI-12188-LT
OC: 11-06-05 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the November 22, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 20, 2005. Claimant did participate. Employer did participate through Jon Pappakee and Marti Jefferson.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time slot attendant through September 21, 2005, when she was discharged. Her last day of work was July 14, 2005, and she had until August 1 to submit FMLA paperwork for absences over five days. After receiving no answer at her phone number, employer did not send a written notice of a deadline.

On July 27 claimant's sister called employer to report claimant was in Grinnell Hospital for treatment of spinal meningitis. She was transferred to Iowa City (University of Iowa Hosptial) on July 27, was incoherent until August 1 and was not physically or mentally capable of turning in the FMLA paperwork. She remained hospitalized through August 22 and from there was sent as an inpatient to Dysert Treatment Facility for physical and rehabilitation therapy. Dysert released her to go home on September 23. Claimant found out she was fired when she called John Pappakee from Dysert on September 21. While employer had sporadic communication with claimant's son, who also worked for employer, it only told him to have her complete the FMLA paperwork "as soon as possible" but "not to worry about the paperwork" and "keep them informed" but gave no specific deadline. Sometime in August claimant's son gave to her supervisor Dr. Daniels' note excusing her from work for an indefinite amount of time while she was hospitalized in Iowa City. She was initially expected to be able to return to work on September 19 but could not due to continued inpatient treatment and physical therapy, so she called employer to report her absence.

While employer counted July 17 to September 21 as the 12 week FMLA period, plus June 6 to 8, 2005, claimant recalls taking vacation for those days and had no other FMLA leave in 2005. Employer did not rebut the vacation claim, or the calculation on the record that July 17 to September 21 amounted to 8.5 weeks, not 12.

Claimant's sister helped her write the answers to the FMLA questions and gave the documents to a social worker to mail. After calling employer's benefits section about August 10, employer said it had not received them. Claimant's son picked up additional copies to complete, which were filled out and faxed to employer. For a second time, and via a second method, employer said it did not get the documents. Sometime before September 21, claimant faxed the FMLA documents, including the doctor's information, to Pappakee, who confirmed he had them and would hand deliver them to the benefits section. Benefits claimed the doctor did not fill out their paperwork and called the doctor from Dysert. Eventually both doctors completed the information and sent it back to employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 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. IDJS, 364 N.W.2d 262 (Iowa 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. IDJS, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer had not issued a written deadline to claimant for submission of the FMLA documentation, claimant had not yet exhausted her leave period, and claimant was medically unable to complete the paperwork at all until at least August 1 and thereafter, only with assistance from her sister and son, claimant's response to employer with the FMLA documentation was more than reasonable. Thus, employer has not met the burden of proof to establish that claimant acted unreasonably, deliberately, or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given, most certainly in the case of an employee who was hospitalized and in rehabilitation therapy for two months for treatment and recovery of a life threatening illness. Benefits are allowed.

DECISION:

The November 22, 2005, reference 01, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

dml/kjw