

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DERRICK K MATTHEWS
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 18A-UI-00348-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/19/17
Claimant: Appellant (2R)

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

Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 2, 2018, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 1, 2018. The claimant participated personally and was represented by Jim Hamilton, paralegal. The employer registered John West to attend the hearing but he was unavailable when called for the hearing, and did not respond to the voicemail directing him to call the Appeals Bureau to participate. Claimant Exhibits 1-72 were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed an original claim effective March 19, 2017, and then a reopened claim effective November 26, 2017, in response to permanent separation with this employer.

The claimant was employed full-time as a liner installer beginning in 2014 and was separated from employment on November 8, 2017, when he was discharged (Claimant Exhibit 25). The claimant last performed work on May 4, 2017.

On May 4, 2017, the claimant was placed on a medical leave of absence in response to an injury to his shoulder. The nature of the injury is disputed between the claimant and employer. The claimant had been issued restrictions (Claimant Exhibit 68) which prohibited his ability to perform his job duties, and his employer stated he was not permitted to return to work until he was released by a doctor. The claimant maintained contact with his employer/its third party leave administrator while on a leave of absence by sending updates of his condition (Claimant

Exhibits 28, 29, 43) and on October 25, 2017, he had surgery to his shoulder. As a result, he was unable to perform any work from October 25, 2017 through November 13, 2017 (Claimant Exhibit 16). The claimant stated this information was relayed to his employer. On November 7, 2017, while the claimant was still on the leave of absence and recovering from surgery, he was discharged by the employer (Claimant Exhibit 25).

The claimant has not been released to return to employment without restrictions since separation with this employer and remains under medical care.

REASONING AND CONCLUSIONS OF LAW:

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

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).

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, 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. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's absenteeism policy or leave policy is not dispositive of the issue of qualification for benefits.

In this case, the claimant was placed on a medical leave of absence, beginning May 4, 2017, and was still on indefinite but temporary medical leave effective November 11, 2017. The claimant maintained reasonable communication with employer about his medical status, which indicated his intention to return to the employment when medically able to do so, and the employer terminated the employment relationship before his release. Therefore, the separation became involuntary and permanent and is considered a discharge from employment.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. In spite of the expiration of the leave period, since the claimant was still under medical care and had not yet been released to return to work without restriction as of the date of separation, no disqualifying reason for the separation has been established. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to job related misconduct. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

REMAND: The issue of whether the claimant is able and available effective November 26, 2017 (due to medical restrictions) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The January 2, 2018, (reference 02) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld shall be paid, provided he is otherwise eligible. **REMAND:** The issue of whether the claimant is able and available effective November 26, 2017 (due to medical restrictions), is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn