

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON LOSH
Claimant

APPEAL NO: 12A-UI-03735-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADDOCO INC
Employer

OC: 02/19/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Jason Losh (claimant) appealed an unemployment insurance decision dated April 4, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Addoco, 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 April 25, 2012. The claimant participated in the hearing. The employer participated through Marilyn Thill, Office Manager and Steve Rodham, President. 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 hired as a full-time general laborer on May 5, 2010. He worked a half day on January 19, 2012 and left at noon. The claimant provided medical excuses taking him off work from January 19, 2012 through January 25, 2012 and again from January 26, 2012 through February 9, 2012. He was scheduled to return to work on Friday, February 10, 2012 but was a no-call/no-show. The claimant was again a no-call/no-show on Monday, February 13, 2012.

The employer's attendance policy provides for immediate termination if an employee has two consecutive absences where he fails to report and fails to report the absences. The claimant was a no-call/no-show the rest of the week. The employer sent a certified letter to the claimant on February 15, 2012, which advised him he was terminated due to the no-call/no-shows. The claimant returned on February 20, 2012 to return his uniforms and equipment as requested in the termination letter.

The claimant contends that he was verbally told not to return to work until after he next saw the doctor, which was not until March 2012. He did not contact the employer or provide this information to the employer because he assumed his medical provider had done so.

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 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 to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on February 15, 2012 in accordance with the employer's policy after he was a no-call/no-show for two consecutive days. However, at the time the employer sent him a termination letter, he had been a no-call/no-show for four consecutive days. Two consecutive no-call/no-show absences can constitute job misconduct. *Boehm v. IDJS*, (Unpublished, Iowa App. 1986). The claimant contends that he had a verbal verification from his doctor's office that he was not to return to work until after he saw his medical provider again and he did not see his medical provider again until March 2012. It was the claimant's burden to promptly report that information to the employer and/or to ensure that it had been provided to the employer,

regardless of whether a doctor's office agrees to provide it. The employer has met its burden and work-connected misconduct as defined by the unemployment insurance law has been established in this case.

Although the separation is classified as a termination, it could also be classified as a voluntary quit. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by failing to call or return to work on February 10, 2012 and thereafter.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him and the claimant has not satisfied that burden. Iowa Code § 96.6-2. His separation was disqualifying regardless of how it is classified and benefits are therefore denied.

DECISION:

The unemployment insurance decision dated April 4, 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/pjs