

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICK J LANE
Claimant

APPEAL NO. 09A-UI-15602-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LETICA CORP
Employer

**Original Claim: 06/28/09
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Rick Lane, filed an appeal from a decision dated October 7, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 18, 2009. The claimant participated on his own behalf. The employer, Letica, participated by Human Resources Manager Betty Calvin.

ISSUE:

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

FINDINGS OF FACT:

Rick Lane was employed by Letica from May 21, 2008 until September 30, 2009 as a full-time packer. He had received a written warning on August 27, 2009, when he had accumulated five points. At that time, he was reminded of the policy that calls for discharge when six points are accumulated.

Mr. Lane was suspended on September 18, 2009, for missing work and accumulating too many points. On September 14, 15, and 16, 2009, he had called in sick. Human Resources Manager Betty Calvin spoke with him on September 15, 2009, and asked if he had gone to the doctor to get a medical excuse. If he had an excuse, he would only accumulate one point for the entire absence due to illness. Without the doctor's excuse, each absence would accumulate another point. Mr. Lane did not go to the doctor.

On September 18, 2009, when he came in to get his paycheck, he was suspended by Ms. Calvin pending investigation of this absences. She does not have the authority to discharge without first consulting with the corporate human resources department. On September 30, 2009, she called Mr. Lane and told him he was discharged.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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.

The claimant had been advised his job was in jeopardy as a result of his absenteeism. But in order to be disqualified from receiving unemployment benefits there must be a current, final act of misconduct which precipitates the discharge. 871 IAC 24.32(8). The final event for Mr. Lane was several days of absence due to illness, all of which he reported as required. A properly reported illness cannot be considered misconduct as it is not volitional. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982).

The issue is not whether the employer made a correct decision in separating the 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 benefits are two separate decisions. *Pierce v. IDJS*, 426 N.W.2d 679 (Iowa App. 1988).

The claimant's final absences were due to illness and were properly reported. This is not misconduct. As there was no final, current act of misconduct that precipitated the discharge, disqualification may not be imposed.

DECISION:

The representative's decision of October 7, 2009, reference 01, is reversed. Rick Lane is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw