

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERALD L DAINS
Claimant

APPEAL NO. 13A-UI-00438-L

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 12/09/12
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 7, 2013 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held on January 29, 2013 in Cedar Rapids, Iowa. Claimant arrived late and participated with his former spouse, Jodie Dains-Swales. Employer participated through benefits specialist, Mary Eggenburg; human resources generalist, Rachelle Stewart; and the assistant director of retail operations. Employer's Exhibits 1 through 3 were received.

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: Claimant was employed as a full-time food service coordinator from February 8, 2010 through December 11, 2012 when he was discharged. He transferred to the new classification on August 1, 2012 and was in a six-month probationary period. He was on medical leave from October 23 when he went to the emergency room. On October 26 he presented a work excuse for October 23 through October 25, 2012 and release from Raghuram Vennalaganti, M.D. for "Tuesday 11/30/12" and was instructed to avoid heavy work or walking long distances. November 30 was a Friday and October 30 was a Tuesday. He was allowed to work a few hours before the supervisor noted the November 30 date error and work restrictions. He was told to get a corrected release but by then the releasing physician was out-of-town for three weeks. He was granted unpaid leave through November 30 because he did not have enough vacation and sick leave to cover that extended leave. He was told the October 26 release would not be sufficient because the employer needed more detail about what "heavy work" was or what "walking long distances" meant. (Employer's Exhibit 3) He was told on November 29 he must present a corrected or new release no later than December 6, but was not told verbally or in writing that he must return to work before that date.

Vennalaganti was not cooperative in amending his erroneous excuse and the employer was aware of it. Claimant obtained a full release from Donald MacFarlane, M.D. on December 3,

2012. (Employer's Exhibit 1) He had a December 4 appointment with Dr. Maxson and a December 5 UIHC appointment so did not work those days. He did not speak to Stewart or leave a message because he was planning to present the excuse after the December 5 appointment and before the December 6 deadline. When he arrived for the appointment on December 5, he was notified he did not have to have the procedure or test so he went to Stewart's office and was instructed to return at 2 p.m. He was allowed to work December 6 and 7 pending an investigatory notice for union representation at a meeting on December 7 and the employer gave him the termination letter on December 8, his next scheduled day of work. (Employer's Exhibit 2)

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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv., 425 N.W.2d 679 (Iowa Ct. 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." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment 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. Because there was unclear communication between claimant and employer about the return to work date as opposed to the medical release submission deadline; the issue must be resolved by an examination of witness credibility and burden of proof. Since most members of human resources departments are considerably more experienced in personnel issues and operate from a position of authority over a subordinate employee, it is reasonably implied that the ability to communicate clearly is extended to discussions about deadlines and expectations. The conduct for which claimant was discharged was the result of poor verbal and non-existent written communication by the employer when it failed to instruct claimant that he must return to work before the December 6 medical release presentation deadline if he were released to work before that date. Thus, the employer has not met the burden of proof to establish that claimant knew he was scheduled to work December 4 and 5 or that he was absent without excuse. Benefits are allowed.

DECISION:

The January 7, 2013 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed. The benefits withheld shall be paid, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/tll