

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MATTHEW R RITCHART
Claimant

GO DADDY SOFTWARE INC
Employer

APPEAL NO. 19A-UI-08829-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/13/19
Claimant: Appellant (2R)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 4, 2019, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 4, 2019. Claimant participated personally. Employer participated by Kris Meyer, Andrea Roman-Diaz, and Scott Lester. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on September 27, 2019. Employer discharged claimant on October 16, 2019 because claimant did not provide documentation requested by employer's third party FMLA and leave provider regarding claimant's movement from intermittent leave to continuous leave.

Claimant worked as a phone representative for employer. Pursuant to company rules, claimant was to be at his desk 96% of the time he was at work. Claimant stated that he was often asked to be away from his desk, and his injury did not allow him to move as required.

Claimant was injured away from work and a screw inserted during a previous ankle surgery caused, and continues to cause great pain to claimant making it so claimant could not work. Claimant forwarded documentation to employer's third party provider, but did not visit the doctor during the month of September, so no additional documentation was forwarded surrounding extending the time off and replacing the intermittent leave for a continuous leave.

Claimant stated that he needed, and still needs surgery to fix his ankle problem. He has been unable to secure the necessary funds for this surgery. In September, claimant had exhausted his intermittent leave and the third party provider alerted claimant that he needed medical documentation to turn the intermittent leave into ongoing leave as the two leaves have two different requirements that must be met. Although these requests were repeatedly sent to

claimant, claimant did not provide additional documentation to employer throughout this time period.

Claimant stated he was in daily contact with the third party provider (Matrix) whenever he would miss work.

Employer made the decision that claimant would be terminated on October 16, 2019 as claimant did not forward to Matrix the additional documentation requested multiple times that would potentially allow the provider to change the expired intermittent leave into a continuous FMLA that would allow claimant to miss additional work.

REASONING AND CONCLUSIONS OF LAW:

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).

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462

N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. 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). In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning not providing proper documentation to support claimant's absenteeism after using up his intermittent leave time.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant kept employer informed as to the ongoing nature of claimant's injury and his inability to make it into work. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

However, this does not end the examination. Claimant has alleged that he is able to look for other jobs that require less movement than claimant's current job. Claimant's current job requires that claimant remain at his desk 96% of the time he is at work. This, claimant argued, was too much time to be away from his desk. Claimant also ignored the administrative law judge's questions concerning the use of crutches or a wheelchair while waiting to secure funds for his surgery. As a result of this, a great question remains as to whether claimant is able and available for work. Claimant stated that at all times since the separation he has continued to suffer from this malady. This matter is remanded to the fact-finder to determine whether claimant is able and available for work.

DECISION:

The decision of the representative dated November 4, 2019, reference 01, is reversed and remanded to the fact finder on the issue of whether claimant is able and available for work. Claimant is eligible to receive unemployment insurance benefits as to the issue of job separation, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn