IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JAKE L CALLAWAY
Claimant

LENNOX INDUSTRIES INC
Employer

APPEAL NO. 15A-UI-01855-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/25/15
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jake Callaway (claimant) appealed a representative's February 6, 2015 (reference 01) decision that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Lennox Industries (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 12, 2015. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 in February 2013 as a full-time assembler. The claimant signed for receipt of the employer's handbook. The handbook indicates employees can be terminated for receiving four warnings in 14 months. Employees must report an absence within 15 minutes of the start of the shift. The claimant's shift started at 3:30 p.m. The claimant requested and was granted Family Medical Leave (FMLA) for an anxiety condition.

The employer issued the claimant a warning for accruing 15 attendance points. His absences were due to personal issues. The employer issued the claimant another warning for taking a picture of himself at work that included images of parts of air conditioners. Taking pictures of the parts is forbidden in the handbook. The employer issued the claimant a third warning for reporting an FMLA absence late by approximately five minutes. The claimant was unable to report the absence immediately because he had a panic attack.

In late November 2014 the claimant suffered a work-related injury to his back and immediately reported his condition to the employer. In late December 2014 the employer sent the claimant to a physician. The physician sent the claimant to physical therapy for his back injury. The claimant injured his back while manually dragging heavy air conditioning units on his line without the aid of ball bearings. Other workers had three feet or more of ball bearings to aid the movement along the line.

On January 6, 2015 the claimant notified the employer at 3:48 p.m. he would be late in arriving to work due to FMLA. The claimant could not have reported his absence earlier because he had a panic attack. He arrived at work before 4:00 p.m. and the employer told him there was no work for him. On January 7, 2015 the employer terminated the claimant for accruing four warnings in 14 months.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(1)a, (8) 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).
>
> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Unreported absences do not constitute job misconduct if the failure to report is caused by mental incapacity. Roberts v. Iowa Department of Job Service, 356 N.W.2d 218 (Iowa 1984). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was an improperly reported illness. The claimant's absence does not amount to job misconduct because the claimant could not properly report her absence due to mental incapacity. The employer did not participate in the hearing and, therefore, has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's February 6, 2015 (reference 01) decision is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

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