IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CHRIS FILLMER
Claimant

AT&T MOBILITY SERVICES LLC
Employer

APPEAL NO. 13A-UI-02942-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/03/13
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Chris Fillmer, filed an appeal from a decision dated March 1, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 9, 2013. The claimant participated on his own behalf. The employer, AT&T Mobility Services (AT&T), participated by Attendance Manager Emily Hunter and was represented by Jacqueline Jones. Exhibit One was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Chris Fillmer was employed by AT&T from February 8, 2010 until January 30, 2013 as a full-time CSR. He was authorized intermittent FML for 2012 but had used his allowed 12-weeks by September 17, 2012. He suffered from migraine headaches which he maintained were caused by his employment but no workers compensation claim was ever filed.

When his FML expired Mr. Fillmer requested accommodations under the Americans With Disabilities act (ADA) which the employer's third party administrator Sedgewick, would process. The request was only to work 25 hours per week instead of 40 as a full-time employee. The claimant's doctor submitted documentation to Sedgewick twice but each time was returned because it was insufficient. The final deadline for submission of the documents was extended to January 7, 2013, but nothing was received by that time. Attendance Manager Emily Hunter spoke with the claimant on January 14, 2013, when she informed him the request for accommodations was denied due to the documentation being incomplete. Mr. Fillmer assured her the doctor would be submitting more information in the next few days.

By January 18, 2013, no new documentation had been received and the employer sent a letter to the claimant saying he must return to work by January 25, 2013. It further stated if he was not able to return by that date, he had several options which were outlined in the letter. The

options gave names and phone numbers to contact. Mr. Fillmer acknowledged he received the letter but did not read it carefully, merely "skimmed" it. One of the last sentences was written in bold type and stated all absences would be treated as unexcused if he did not exercise one of the options to extend his leave of absence.

Instead of exercising the options he went to his personal doctor on January 23, 2013, and was told he should not return to work. Mr. Fillmer was absent on January 25, 2013, but never provided a doctor's statement to the employer or exercised any of the options outlined in the letter.

On January 28, 2013, Ms. Hunter checked with Sedgewick and discovered no new medical documentation had been provided to excuse the absences. A letter was mailed on that same day notifying the clamant he was discharged for being no-call/no-show to work since January 25, 2013.

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. The employer was willing to work with him, providing him with temporary accommodations and information on his options. Whatever Mr. Fillmer and the doctor were doing, was insufficient and he had several notices that the requirements were not being met.

For whatever reason the claimant did not chose to carefully read the letter of January 18, 2013, notifying him he must return to work and his options on how to get an extension or further leave of absence. His decision not to follow the instructions or take advance of the options provided to him is not the fault of the employer. He did not communicate further with Ms. Hunter or any other member of management after the January 18, 2013, letter.

The absences may have been for illness but were not properly reported or excused in advance. Only a properly reported illness cannot be considered misconduct as it is not volitional. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The absences were therefore unexcused. Mr. Fillmer was discharged for excessive unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

DECISION:

The representative's decision of March 1, 2013, reference 01, is affirmed. Chris Fillmer is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

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