

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTOPHER C OLIPHANT

Claimant

IA DEPT OF HUMAN SVCS/GLENWOOD

Employer

APPEAL 17A-UI-02262-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/29/17

Claimant: Appellant (5)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 17, 2017, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit for non-work related illness or injury. The parties were properly notified of the hearing. A telephone hearing was held on March 22, 2017. The claimant participated and was represented by attorney Michael Murphy. The employer participated through Hearing Representative Malia Maples and witness Natalie McEwen. Kelly Robinson and Amanda Reed were also present on behalf of the employer, but did not testify. Claimant's Exhibits A through D and employer's Exhibits 1 through 8 were received into evidence.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Is the claimant able to work and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a residential treatment worker from October 22, 1997, until this employment ended on February 1, 2017, when he was terminated.

On September 26, 2016, claimant went on a medical leave of absence after suffering an injury. Claimant exhausted all his FMLA leave by November 19, 2016. By December 13, 2016, claimant had exhausted all of his paid leave as well. On December 13, 2016, claimant was sent a letter explaining that his leave had been exhausted but he was eligible for another 90 days of unpaid leave if he filled out a request for such and provided medical documentation supporting

his need for this leave. Claimant responded to this letter on December 22, 2016 with the request for the 90-day leave, but did not provide supporting documentation.

On January 4, 2017, claimant was sent another letter. This letter explained medical documentation supporting his need for additional leave was still needed to approve his request. The letter informed claimant he had until January 13, 2017 to provide such information. The letter also included information about various other leave options, such as donated leave for catastrophic illness and long term disability. The letter concluded by advising claimant that if he wished to discuss anything in the letter he should contact McEwen or Krista Ellis in Human Resources. The employer heard nothing from claimant following this letter.

On January 23, 2017, claimant was sent a third letter again informing him that the employer still needed medical documentation to approve his leave request. The letter gave claimant until January 30, 2017 to provide the necessary documentation. The letter concluded by warning claimant if he did not respond to the letter by January 30, 2017, he would be terminated. The employer did not hear from claimant following this letter. Accordingly, claimant's employment was terminated on February 1, 2017.

Claimant testified he could not provide the medical documentation requested because there was an ongoing dispute as to whether the injury was a work related injury. According to claimant his primary insurance would not cover treatment because it believed the injury should be covered under the employer's workers' compensation insurance, but the claim was being denied by the employer's workers' compensation carrier. Because claimant feared neither insurance company would cover his medical costs, he did not make or attend additional medical appointments. Claimant assumed the employer knew this, so he did not contact McEwan after receiving her letters, despite the warning that failure to do so could result in termination. McEwan testified she was unaware of the situation, as both forms of insurance are dealt with through outside entities, and that had claimant contacted her to explain the situation they could have worked something out.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. Claimant was given notice in writing by the employer that he should respond to the letters he had been sent no later than January 30, 2017. Claimant was specifically advised in the January 23 letter that if he failed to contact the employer by January 30, the employment relationship would end. Claimant was unable to see his doctor to get the documentation he employer was requesting and therefore did not contact the employer as instructed. An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The claimant was given a reasonable directive by the employer to contact them by January 30, 2017. The employer has presented substantial and credible evidence that claimant failed to contact them after having been warned that failure to do so would result in termination. Failure to follow a reasonable directive is disqualifying misconduct. Benefits are denied. As claimant's separation from employment is disqualifying, the issue of whether he is able to work and available for work is moot.

DECISION:

The February 17, 2017, (reference 01) unemployment insurance decision is modified with no change in effect. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he is otherwise eligible. As claimant's separation was disqualifying, the issue of whether he is able to and available for work is moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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