

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GARRET WALKER
Claimant

PRESTAGE FOODS OF IOWA LLC
Employer

APPEAL 20A-UI-13654-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 27, 2020, (reference 03) that denied benefits concluding he had been discharged due to excessive absenteeism. The parties were properly notified about the hearing. A telephone hearing was held on December 29, 2020. Claimant participated and testified. The employer did not participate.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a production lead from February 25, 2019 until he was separated from employment on July 27, 2020, when he was terminated. The claimant's immediate supervisor was Superintendent Ted Byrnes.

On May 21, 2020, Human Resources Manager Sara Adams told the claimant that the employee manual allowed him up to 12 weeks of unpaid leave because he had worked there for at least 12 months. Ms. Adams said most employees do not take the full 12 unpaid weeks for their leave. The leave of absence paperwork the claimant filled out did not specify an end date. Instead, the claimant was instructed to give updates every couple of weeks. The claimant was also supposed to inform the employer of his expected return date.

At the end of June 2020, Ms. Adams called the claimant to inform him that he had to obtain a doctor's note to justify his leave of absence. The claimant's doctor wrote him a note stating that the claimant needed eight weeks from May 21, 2020 to bond with his child and to find childcare.

On July 23 or 24, 2020, the claimant left a voicemail with the front desk to see if the employer needed any information from him regarding his leave of absence status. The employer did not return that voicemail.

On August 3, 2020, the claimant called the front desk and he was transferred to Ms. Adams. Ms. Adams told the claimant he had been terminated on July 27, 2020. The claimant said he thought he had been approved for 12 weeks of unpaid leave. Ms. Adams clarified the claimant had up to 12 weeks of unpaid leave and she said the doctor's note he provided only approved him for eight weeks of unpaid leave.

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.

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

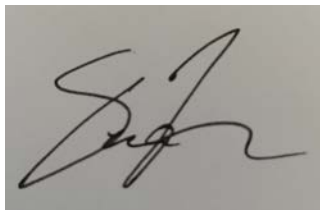
Ct. App. 1984). Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee’s act is misconduct does not rest solely on the interpretation or application of the employer’s policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In this case, the employer and the claimant at most appeared to have a misunderstanding regarding his return from leave. The claimant called in to keep the employer informed about his leave of absence. The employer did not participate and did not provide any other information the claimant intentionally refused to return from his leave of absence when instructed. Instead, the record shows the claimant was left in the dark about when his leave was exhausted. Such circumstances do not meet the employer’s burden to show the claimant engaged in willful misconduct. Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed. Benefits are allowed.

DECISION:

The October 27, 2020, (reference 03) unemployment insurance decision is reversed. The employer discharged claimant for no disqualifying reason. Benefits are granted.



Sean M. Nelson
Administrative Law Judge
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February 10, 2021
Decision Dated and Mailed

smn/scn