

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATTHEW A WALKER
Claimant

LINEAGE LOGISTICS LLC
Employer

APPEAL 20A-UI-01306-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/19/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Matthew Walker (claimant) appealed a representative's February 11, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Lineage Logistics (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 2, 2020. 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. The administrative law judge took official notice of the administrative file.

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 worked for a temporary service that assigned him to work for Iowa Cold Storage in September 2018. In January 2019, Iowa Cold Storage hired the claimant as a permanent worker. In October 2019, the employer took over Iowa Cold Storage and the claimant was hired as a full-time fork-lift operator. He signed for receipt of the employer's on-line handbook when he was hired.

Each time he changed employers he made clear that he could not work any Saturday hours because he had a youth ministry to attend to on Saturdays. He also made an agreement that he could arrive a little late to work. He lived in Des Moines, Iowa. His wife worked the 6:00 a.m. to 2:00 p.m. shift in Ames, Iowa. The claimant worked a shift starting at 3:30 p.m. in Altoona, Iowa. He had to wait for her to come home with the car before he could leave for work. The employer agreed to the claimant's restrictions.

The employer's handbook was different from the previous handbook because the attendance policy involved a rolling twelve-month period. Iowa Cold Storage attendance policy used a calendar year period of time. The claimant asked the employer many questions about the new policy but received few answers. He did not know when the new policy started or how many points he had when he started with the new employer, if any. He had received warnings from Iowa Cold Storage but none from the employer.

Since he started work with the employer, he was tardy nine times for an unknown amount of time. He was absent on October 25, 2019, for an unknown reason. He properly reported his absences due to illness on December 6, 7, 2019, and January 10, 2020. He was absent on Saturday, January 18, 2020.

On January 19, 2020, the claimant requested time off on January 20, 2020, and January 22, 2020. The claimant's father was visiting on Martin Luther King, Jr., Day, January 20, 2020. The claimant's brother was having pre-surgery on January 20, 2020, and surgery on January 22, 2020. On January 19, 2020, the claimant's supervisor texted him approval of the two days off.

On January 23, 2020, the claimant clocked in and attended a meeting before being called into the office. The employer terminated him for attendance points accumulated over a time period when the company had two different attendance policies.

REASONING AND CONCLUSIONS OF LAW:

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

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. There was no evidence of the specifics of the employer's attendance policy or what date the policy started. It appears the claimant was issued points for properly reported absences due to medical issues. The employer also issued the claimant attendance points for approved time off. The claimant and the employer had an agreement that the claimant would not work on Saturdays but the employer assessed the claimant points when he did not appear for work on Saturdays. Likewise, the employer assessed the claimant points for being late for work after allowing the claimant extra time to appear for work.

With regard to the final event, the claimant requested and the employer approved the claimant's time off on January 20 and 22, 2020. The employer then terminated him for his absences on those days. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's February 11, 2020, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn