IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JARED G PRATHER
Claimant

EXODUSDIRECT LLC
Employer

APPEAL NO: 10A-UI-09992-D

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/23/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

ExodusDirect, L.L.C. (employer) appealed a representative's July 7, 2010 decision (reference 02) that concluded Jared G. Prather (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on August 19, 2010. The claimant participated in the hearing. Jaret Koenig appeared on the employer's behalf and presented testimony from two other witnesses, Randy Beh and Michael Brehner. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 6, 2009. Since about January 2, 2010 he worked full time as shipping manager at the employer's Des Moines, Iowa retail and warehouse distribution site. His last day of work was May 24, 2010. The employer discharged him on that date. The reason asserted for the discharge was having three disciplinary actions within a six-month period.

The claimant had been given a first level warning on February 15, 2010 for failure to perform tasks to standard as well as some tardiness. On May 18 the claimant fell while at work and had some injury to his back. In the same building site as the employer's facility is the office of a chiropractor who is the father of Mr. Koenig, the employer's vice president of operations. When the claimant fell, Dr. Koenig examined him and told him that he should go home for the day; the claimant understood he should also take off the next day, and believed the employer was aware of that instruction.

The claimant went home and did not report for work on May 19. He did not call in an absence for that day, believing the employer already knew he would be off work. On May 20 the

claimant spoke with the employer and understood he needed to be seen again by a doctor to remain off work; he was then advised he would likely also be given a second level warning for failing to follow safety procedures leading to his fall. The claimant disagreed with that determination as he was following the same procedures as had always been followed in performing the task in which he was injured. On May 20 he was also cautioned that the employer had expected him to call in the absence for May 19. However, he did go to a doctor on May 20, and later that day dropped off a doctor's excuse covering him that day, and indicating he could return to work "5/24/10 if better." (Exhibit One, fax page number 31.) The employer's records reflect that a first report of injury was filed on May 21, 2010.

After receipt of the doctor's note on May 20, the employer believed that the claimant understood that if he did not report to work on May 24 he would need another doctor's excuse before that day. The claimant did not understand that the employer expected another excuse in advance of May 24 if he could not return to work that day, and believed he was already covered for that day if he did not feel "better" by that date. May 24 was a Monday. When the claimant awoke that morning, he did not believe he was sufficiently "better" to be able to return to work. He therefore sent a message to the customer service representative who was on duty at the location at that time, 7:30 a.m., a half hour before he was scheduled to report for work, indicating that he would not be in to work that day. The employer asserted that the claimant should have directly contacted his immediate supervisor, Mr. Beh, the operations manager, by cell phone if necessary; however, the claimant had never been required to contact Mr. Beh directly to report absences in the past, but rather had routinely contacted or left messages with the customer service representative.

When Mr. Beh received the message that the claimant would not be at work that day, he recontacted the claimant at about 9:00 a.m. and instructed him that he needed to provide another doctor's excuse by noon that day. The claimant received the message and went to his doctor's office; he obtained an excuse covering him for May 24 and May 25. (Exhibit One, fax page 30.) He went to the employer's facility by noon to deliver the note. The employer had him wait and then a meeting was held between the claimant, Mr. Koenig, and Mr. Beh.

In that meeting the claimant was given a second level discipline for failing to follow safety procedures in the incident that led to his fall on May 18, which the claimant refused to sign because of disagreeing with the conclusion that he had failed to follow established procedures. The employer questioned whether he had actually been seen by a doctor that day to extend his leave; the claimant acknowledged that he had not been able to be seen by the doctor directly, but that a nurse or administrator in the office had provided the note. The employer then began to question the claimant as to what kind of work restrictions he might have, which the claimant was unable to answer as he was still being treated and the doctor had not informed him if or whether he could return to work with some work restrictions. The employer then determined that the claimant was being uncooperative and had failed to follow the prescribed instructions regarding returning to work; it therefore issued a third level discipline, resulting in discharge.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment

insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is receiving the second and third level disciplines first for the fall on May 18 and then for the issues relating to his return to work status thereafter. The employer has not established that there were established safety procedures in place regarding the function the claimant was performing when he fell, so that if he had followed those regular procedures, the fall would not have occurred. More importantly, for the absences after that date the employer was on adequate notice that the claimant would be off work, including that he might also be off work on and after May 24 if he was not “better.” An expectation that the claimant would be able to determine prior to the morning of May 24 that he did not feel “better” and therefore obtain an advance doctor’s note for that date was not reasonable. The claimant acted reasonably to obtain a note from his doctor’s office on that date; even if the doctor was not able to see and examine him directly, a valid note can be and was issued under the doctor’s authorization. The claimant was not unreasonable in being reluctant to commit to identifying work restrictions so he could return to work, when he had not yet obtained that information from his doctor himself.

The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's July 7, 2010 decision (reference 02) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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