

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JASON D HEITZ
Claimant

APPEAL NO. 18A-UI-09959-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

XPO LOGISTICS FREIGHT INC
Employer

OC: 07/29/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jason Heitz (claimant) appealed a representative's September 27, 2018, decision (reference 05) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with XPO Logistics Freight (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 15, 2018. The claimant participated personally and provided his wife, Audrie Heitz, as an additional witness. The employer participated by Jeff Foster, Human Resources Supervisor. The claimant offered and Exhibit A was received into evidence.

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 was hired on September 25, 2017 as a full-time dock worker. The employer has an online handbook which includes an attendance policy. The employer talked to the claimant about it at his orientation.

The claimant had a non-work-related foot injury. He requested and was granted a medical leave of absence (LOA) from March 5 to May 31, 2018. He returned to light duty work from June 1 to June 27, 2018. The claimant started performing work without restrictions on June 28, 2018. He properly reported his absence on July 7, 2018. On July 9, 10, and 11, 2018, the claimant properly reported his absence from work because his father was in the hospital. The claimant returned to work on July 12, 2018.

On July 13, 2018, the claimant talked to the human resources supervisor about continued issues with his foot. The supervisor told the claimant to contact Matrix, a third party vendor who handled the employer's leave issues. The supervisor told the claimant he needed to report his absences to Matrix rather than the employer.

On July 16, 2018, the supervisor talked to the claimant about the possibility of light duty work with the employer. He relayed to the claimant that an extended LOA was denied. On July 19, 2018, the claimant saw his doctor. The doctor restricted the claimant to working, sitting at a desk. On July 18, 19, and 20, the claimant took bereavement leave after the passing of his father on July 17, 2018.

The claimant had foot surgery on July 25, 2018. On July 26, 2018, the human resources supervisor told the claimant about two options. The claimant could resign or the employer could terminate him. The claimant refused to resign. On August 6, 2018, the employer sent the claimant a letter terminating the claimant effective August 9, 2018. The employer terminated the claimant for being absent due to medical issues. The claimant's physician released the claimant to return to work without restrictions on August 27, 2018.

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).

Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Services v. Jackson and Employment Appeal Board*, 810 N.W.2d 532 (Iowa Ct. App. 2012). 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).

Issues surrounding separations of employment for medical reasons and subsequent entitlement to unemployment insurance benefits are among the most challenging in unemployment insurance law. The evidence in this case showed that the claimant was unable to return to work until shortly after he was terminated. By the time his doctor permitted him to return to full time work on August 27, 2018, he had already been terminated by the employer on August 9, 2018. Properly reporting a medical condition is not misconduct. 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 September 27, 2018, decision (reference 05) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs