

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATTHEW W HAMMOND**  
Claimant

**APPEAL NO: 11A-UI-10404-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED PARCEL SERVICE**  
Employer

**OC: 07/03/11  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's July 27, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non disqualifying reasons. The claimant participated in the hearing. Eric Krumme, the operations manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in July 2006. He worked as a full-time second shift employee as a preloader. The employer considers an employee to have excessive absenteeism when an employee has five absences in a rolling nine-month time frame. Any unplanned absence, however, can result in discipline. When an employee is unable to work as scheduled, the employer expects the employee to notify the management at least an hour before a scheduled shift.

Prior to May 2011, the claimant had attendance issues. The employer gave him warnings on September 14 and October 8, 2009. The employer gave the claimant discharge papers in November 2009 and on April 23, 2010, for attendance issues. The claimant appealed all terminations. After the reasons for the termination were examined, the terminations were reduced to a suspension.

In December 2010, the employer again informed the claimant he was being discharged for attendance issues. The claimant appealed this termination, but his appeal was not heard until April 2011. In April, the claimant's termination was again changed to a one-day suspension. The claimant understood the April suspension was the last time he would be suspended. The employer warned the claimant that if he had any more unplanned absences, he would be discharged. The claimant understood his job was in jeopardy.

Before the claimant was scheduled to work on May 10, he fell down some stairs at his home. He cracked a bone in his ankle and broke his cell phone in the fall. The claimant was able to borrow a friend's cell phone before he was scheduled to work at midnight. The claimant called the employer's phone number about 7 p.m. but no one answered the phone and the claimant could not leave a message. The claimant tried several times to notify the employer he was unable to work on May 10. The claimant was unable to talk to anyone in management or leave a message. The claimant sent a text message to a friend, co-worker, who was a tower supervisor, but not a full-time supervisor. The claimant's text message at 6 p.m. indicated he was unable to work.

The claimant had gone to a doctor on May 10 and was restricted from working for two weeks. The claimant did not have access to a phone on May 11 or 12. On May 12, the claimant went to work to pick up his paycheck. He was not scheduled to work on May 13 because he had previously requested time off on May 13. On May 12, the employer discharged the claimant for continued unplanned absenteeism or for being absent on May 10, 11 and 12.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant has had an attendance issue for over a year. In April 2011 when the employer again reduced a discharge to a one-day suspension, the claimant understood his job was in jeopardy. He understood that if he had any more unplanned attendance issues, he would be discharged.

The claimant's absences on May 10, 11, and 12 occurred when he accidentally fell and cracked an ankle bone. The claimant went to a doctor who restricted him from working for two weeks.

Even though the claimant tried to call a supervisor on May 10 before his shift started, no one answered the phone and he was unable to leave a message. The claimant may have used poor judgment when he did not continue to try to contact the employer on May 10, but the claimant's testimony is credible in that he tried to contact someone in management. Under the circumstances of this case, the claimant made a reasonable attempt to notify the employer he was unable to work on May 10 and could not at work for two weeks for medical reasons. The evidence does not establish that the claimant intentionally failed to work as scheduled. Instead, he injured himself and was unable to work. Under these facts, the claimant did not commit work-connected misconduct.

**DECISION:**

The representative's July 27, 2011 determination (reference 01) is affirmed. The employer established business reasons for discharging the claimant, but the claimant did not commit work-connected misconduct. As of July 3, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs