

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LONNIE R SCHAFROTH
Claimant

APPEAL NO. 12A-UI-10191-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COX MANUFACTURING COMPANY
Employer

OC: 06/17/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Cox Manufacturing Company filed a timely appeal from a representative's decision dated August 13, 2012, reference 07, which held the claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on September 19, 2012. The claimant participated. The employer participated by Mr. Robert Cox, company president; and Mr. Mark Heston, plant manager; and Ms. Megan Weaver. Employer's Exhibits 1 through 6 were received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Lonny Schafroth was employed by Cox Manufacturing Company from February 21, 2012, until July 19, 2012, when he was discharged for excessive absenteeism after being warned. Mr. Schafroth was employed as a full-time welder for the company and was paid by the hour. Mr. Schafroth was terminated after a series of warnings about unsatisfactory attendance.

A final written warning for excessive absenteeism was issued to Mr. Schafroth on July 9, 2012. That warning was issued based upon the claimant's failure to return to work for three workdays after being released by his doctor to return to work effective June 28, 2012. Mr. Schafroth was warned at that time that he must provide medical documentation in the future for absences related to medical reasons.

The final incident that resulted in the claimant's termination took place on July 18, 2012, when Mr. Schafroth called in and indicated he was sick, stating he was going to a doctor that day. When the claimant provided no medical documentation as previously required, he was discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

No aspect of the contract for employment is more basic than the right of the employer to expect employees will appear for work on the day and hour agreed upon. Recurrent failure to honor that obligation shows a disregard for the employer's interests and thus may justify a finding of misconduct in connection with the work.

In the case at hand, the claimant had been excessively absent and had received a number of warnings from the employer about his poor attendance. After the claimant had delayed returning to work three days after being released by his physician on June 28, 2012, the claimant was issued a final written warning. The claimant was specifically warned that in the future he must provide medical documentation verifying that he needed to be absent for medical reasons. Although the claimant was again absent on July 18, 2012, stating he was going to the doctor that day, he did not supply any of the required documentation to support his contention that he needed to be absent for medical reasons. Based upon the number of previous absences and warnings that had been served upon the claimant, the administrative law judge concludes the employer's requirement that the claimant provide medical documentation was reasonable and work-related. The claimant's failure to do so was contrary to the employer's interests and standards of behavior and thus was disqualifying under the provisions of the Employment Security Law. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated August 13, 2012, reference 07, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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