

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHAN W KASDORF
Claimant

APPEAL NO. 12A-UI-15030-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRESCENT ELECTRIC SUPPLY COMPANY
Employer

**OC: 11/11/12
Claimant: Appellant (1)**

Section 96.5-2-a – Disciplinary Suspension

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 14, 2012, reference 02, that concluded he was placed on a disciplinary suspension for misconduct. A telephone hearing was held on February 15, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Mark Doser participated in the hearing on behalf of the employer with a witness, Pat Faley. Exhibits 1, 2, and 3 were admitted into evidence at the hearing.

ISSUE:

Was the claimant suspended for work-connect misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer from June 3, 2010, to November 9, 2012. On February 14, 2012, he was warned, for failing to follow delivery instructions, failing to deliver material on requested ship dates, and publically complaining about a customer's procedures. He was warned that his negative performance was affecting the employer and customers and continued problems would result in termination. On September 11, 2012, he received a final warning for confronting and yelling at a driver at a stop sign for looking at a cellphone. He had been counseled for the same kind of conduct in March 2012.

The claimant had been working for a couple of weeks in the employer's branch office in Cedar Rapids. On November 9, he was absent to take his wife to the eye doctor. Instead of calling and explaining why would not be at work, he sent a text message to the branch manager. In the text message, he typed, "Wont b in today. Sick of working in CR." The branch manager believed the claimant was just skipping work to avoid going to Cedar Rapids. On November 12, the claimant was given a written warning and suspended for one week for an unexcused absence and disrespectful attitude.

The claimant filed a claim for unemployment insurance benefits effective November 11, 2012. He returned to work on November 19, 2012.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was suspended for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged or suspended for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: “While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8). The same rule applies to suspensions.

The claimant’s text message was reasonably interpreted as him saying he was not coming to work because he was sick of going to Cedar Rapids. It displayed a negative attitude that the claimant had been warned about in the past. It violated the standard of respectful behavior that the employer had the right to expect of the claimant. He was suspended for work-connected misconduct.

DECISION:

The unemployment insurance decision dated December 14, 2012, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs