

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAEVON D WASHINGTON
Claimant

APPEAL NO: 12A-UI-00970-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALDS
Employer

**OC: 12/18/11
Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's January 18, 2012 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. Neither party responded to the hearing notice or participated in the hearing. Based on the administrative record and the law, the administrative law judge concludes the claimant is not 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 May 2010 as a full-time crew member. When the claimant started working, he learned the employer required employees to notify the employer three hours before they were scheduled to work when they were unable to work as scheduled.

During his employment, the claimant received several warnings for attendance issues. On February 24 and March 22, 2011, he received warnings for failing to notify the employer three hours before his shift started that he was unable to work. He received warnings on June 4 and 14, 2011, for reporting to work late. On June 12, the claimant received a warning for failing to call or report to work as scheduled.

The employer gave him a final written warning for attendance issues on July 17. He received the final warning because he was two hours late for work. The employer warned him that if he had any more attendance issues, he would be discharged. On November 5, 2011, the claimant did not call or report to work. The employer discharged him on November 6 for continued attendance issues.

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. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known his job was in jeopardy after he received a final written warning for attendance issues in July 2011. The employer also warned him before July that he could be discharged if he again did not call or report to work as scheduled. On November 5, 2011, the claimant did not call or report to work as scheduled. Even after the employer called him on November 5 and the claimant said he would come to work, he did not. Without any explanation as to why the claimant did not report to work on November 5 after he said he would, the claimant committed work-connected misconduct when he did not report to work. As of December 18, 2011, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits he may have received since December 18, 2011, will be remanded to the Claims Section to determine.

DECISION:

The representative's January 18, 2012, determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 18, 2011. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver any overpayment is **Remanded** to the Clams Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw