

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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HARSCO CORP
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-07182-DW
OC: 06/18/06 R: 12
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Steve A. Elliott (claimant) appealed a representative's July 7, 2006 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Harsco Corporation (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on August 16, 2006 in Davenport, Iowa. The claimant participated in the hearing. The employer did not appear for the hearing. Based on the evidence, the arguments of the claimant and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in June 2003. The claimant worked full-time. The claimant knew the employer had a written attendance policy. After an employee accumulated 2.5 attendance points within a 90-day period, the employer initiated its progressive discipline. The claimant understood the attendance policy covered a rolling calendar year and an employee could be discharged after receiving three written warnings in a year.

The employer gave the claimant his first written warning for attendance issues in March 2005. The employer gave the claimant a three-day suspension and his second written attendance warning in February 2006. The February warning informed the claimant his job was in jeopardy if he had further attendance problems.

After the February 2006 written warning, the employer counted the claimant late for work one day when he did not punch in on time and assessed the claimant a half point. The claimant called in a day in March to report he was ill and unable to work. In late May, the claimant hurt his back when he was off-duty. The claimant notified the employer the three days he was unable to work because his back hurt. The employer considered the three days as one attendance occurrence.

On June 12, 2006, the employer gave the claimant his third written warning for attendance problems and a five-day suspension. The employer also informed the claimant that he was discharged for excessive absenteeism. The claimant received a termination letter about four weeks later confirming he had been discharged.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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 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). 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 IA 24.32(8).

Although the claimant asserted the employer did not follow its written attendance policy, the fact remains the employer discharged the claimant. Even if the employer followed the written attendance policy, the issue in this case is whether the claimant committed a current act of work-connected misconduct. Therefore, there is no need to address whether the employer correctly implemented the attendance policy.

The claimant understood his job was in jeopardy for attendance issues. The claimant's most recent absence, however, occurred because he was unable to work after he hurt his back when he was not at work. The law specifically states being unable to work does not amount to work-connected misconduct. The claimant properly notified the employer the three days he was unable to work and returned to work when his back no longer hurt. Under the facts of this case, the claimant did not intentionally or even substantially disregard the employer's interests. The claimant did not commit a current act of work-connected misconduct. Therefore, as of June 18, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 7, 2006 decision (reference 02) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of June 18, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/cs