

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

NICHOLAS E HENKEL
17909 PERU RD #39
DUBUQUE IA 52001

PRO CARE AUTOMOTIVE INC
1020 CEDAR CROSS RD
DUBUQUE IA 52003

Appeal Number: 04A-UI-05023-DT
OC: 03/28/04 R: 04
Claimant: Appellant (1)

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:

Nicholas E. Henkel (claimant) appealed a representative's April 20, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Pro Care Automotive, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 26, 2004. The claimant participated in the hearing. Shawn Sauser appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant started working for the employer on August 1, 2002. He worked full time as an auto technician in the employer's auto repair business. His last day of work was March 31, 2004. The employer discharged him on April 2, 2004. The reason asserted for the discharge was excessive absenteeism.

The claimant had been given prior warnings for absences including no-call/no-show on February 24, 2003 and July 29, 2003. He missed work from March 8, 2004 through March 12, 2004 and was a no-call/no-show for that time, but subsequently provided a doctor's excuse that he had been hospitalized for that time. Because of his hospitalization, he missed a court appointment, resulting in his being jailed for several days including at least March 18 and March 19. He was then a no-call/no-show on March 26 and March 30. He was given a final written warning on March 31, indicating that further occurrences would result in discharge. He explained to the business president, Mr. Sauser, that his no-call/no-shows were due to his sleeping through the day due to medication he was taking for depression. Mr. Sauser responded that the claimant needed to find some way of dealing with the effect of the medication. The claimant understood his no-call/no-show were placing his job in jeopardy.

The next day, April 1, the claimant again overslept, not waking up until approximately 4:00 p.m., about two hours before the end of his shift. He did not call the employer at that time. Although the claimant knew the medication was causing a problem with his employment, he did not call his doctor regarding the effects until on or after April 1, and he did not make any special arrangements to ensure that he did not continue to oversleep.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code Section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The presumption is that oversleeping is generally within an employee's control. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). While one incident of oversleeping due to medication might be outside the claimant's control, in this case there were multiple occurrences, and the claimant knew they were placing his job in jeopardy. Knowing that the medication was causing him a problem, it was within his control to attempt to take additional measures to ensure that he would wake up to report to work. The claimant's final absence was not excused. The claimant had previously been warned that future absences could result in termination. Higgins, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's April 20, 2003 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 2, 2004. 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.

ld/kjf