

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER PONT**  
Claimant

**APPEAL NO: 08A-UI-04657-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DECKER ACQUISITION CORP**  
Employer

**OC: 04-13-08 R: 04**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 5, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 29, 2008. The claimant participated in the hearing. Ed Smith, Production Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time welder for Decker Acquisition from April 16, 2007 to April 15, 2008. The employer's policy states that if an employee accumulates one and one-half points they receive a verbal warning; if they accumulate two points they receive a written warning; if they accumulate two and one-half points they receive a three-day suspension; and if they accumulate three points they are terminated. On April 12, 2008, the claimant failed to call or report for Saturday overtime and received two points. On April 14, 2008, he called in and said he would not be at work that day and received one point and the employer terminated his employment. The claimant testified that the lead man told him they might have to work on Saturday and the claimant said he could not because he had to take his car into the shop on Friday and needed to work on his car on Saturday but in any event his supervisor never told him they were definitely working Saturday. The employer testified he asked for a ride Saturday but the claimant said he asked his lead man Thursday night for a ride to work on Friday when he dropped his car at the shop. He further testified he was ill due to his diabetes April 14, 2008, but did not mention that to the employer.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. 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 substantial and 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). When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). While the claimant did violate the employer's attendance policy, he testified he was not told by a supervisor they were working Saturday and consequently he did not call or show up for work that day and received two points. Although it is debatable whether he actually knew they were working Saturday, the employer is at least partially relying on the statement from the lead man that the claimant asked for a ride to work on

Saturday but it seems more reasonable that he asked for the ride Friday, as he testified, when he had to take his car into the shop. The lead man did not participate in the hearing and was not subject to cross examination so more weight must be given to the claimant's first-hand testimony regarding the Friday/Saturday situation. The claimant testified his last absence was due to illness even though he did not tell the employer he was sick. Even if the administrative law judge looks at the evidence in the light most favorable to the employer, the claimant's two absences do not constitute excessive, unexcused absenteeism as defined by Iowa law. Therefore, benefits must be allowed.

**DECISION:**

The May 5, 2008, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/pjs