

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

JESSE L HULBERT
PO BOX 315
SHELL ROCK IA 50670

EXPRESS SERVICES INC
PO BOX 720660
OKLAHOMA CITY OK 73172

Appeal Number: 05A-UI-07326-DWT
OC: 07/12/05 R: 01
Claimant: Respondent (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:

Express Services, Inc. (employer) appealed a representative's July 12, 2005 decision (reference 01) that concluded Jesse L. Hulbert (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 3, 2005. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Lisa Franzmier appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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 registered to work for the employer on December 15, 2003. The employer is a staffing services firm.

During the claimant's work assignments, the employer repeatedly talked to the claimant about his attendance. On January 14, 2005, the employer gave the claimant a written warning that told him he could not have any more attendance problems. On April 4, 2005, the claimant was late for work because of day care issues. Other absences the claimant had after January 14, 2005, the employer considered as excused absences.

Before his 6:00 a.m. shift on June 6, the claimant left a message informing the employer he was unable to work at 6:00 a.m. because his child was ill and the claimant needed to take his child to a doctor. The claimant indicated he would call the employer again and let the employer know if he could work at all on June 6, 2005. When the claimant had not called back by 2:15 p.m., the employer tried unsuccessfully to contact him. The claimant informed the employer that if the claimant did not work at all on June 6, the claimant did not want the claimant to return to that assignment because of the claimant's poor attendance.

After the claimant's June 6 shift ended, the employer again called the claimant at his home. The employer talked to the claimant around 4:30 p.m. The claimant had forgotten to call the employer after he made arrangements to take his child to a doctor. The employer discharged the claimant on June 6. The employer discharged the claimant because the claimant had attendance problems and he failed to contact the employer again to let the employer know if he could or could not work on June 6.

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).

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 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).

The facts establish the employer gave the claimant a warning about his attendance in mid-January 2005. After the January warning, the evidence does not reveal that the claimant had excessive unexcused absenteeism. On June 6, 2005, the claimant properly notified the employer that he was unable to report to work at 6:00 a.m. because his child was ill and he had to take the child to a doctor. The claimant's reason for not reporting to work on June 6 is reasonable.

The employer established business reasons for discharging the claimant. The claimant should have called the employer again after he knew what arrangements he could make for his child to see a doctor. The claimant's failure to contact the employer again on June 6 amounts to negligence, but does not rise to an intentional disregard of the employer's interests. The facts do not establish that the claimant committed a current act of work-connected misconduct. Therefore, as of June 5, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 12, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of June 5, 2005, 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/pjs