IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KEVIN R DAVIS
Claimant

SIOUX-PREME PACKING CO
Employer

APPEAL NO: 07O-UI-02276-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/03/06 R: 01
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Sioux-Preme Packing Company (employer) appealed a representative's December 22, 2006 decision (reference 01) that concluded Kevin R. Davis (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. A hearing was initially held on January 22, 2007. The claimant did not participate in the hearing, but the employer did. As a result of the evidence presented during the hearing, another administrative law judge reversed the decision.

The claimant appealed to the Employment Appeal Board. The Employment Appeal Board remanded this matter to the Appeals Section for another hearing.

After hearing notices were again mailed to the parties' last-known addresses of record, a telephone hearing was held on March 21, 2007. The claimant participated in the hearing. John Zoss, the maintenance supervisor, and Mark Hickman, the plant manager, appeared on the employer's behalf. During the hearing, the claimant requested that a doctor's statement identified as Claimant Exhibit A be admitted as evidence. The employer did not have a copy of this document, but a copy was faxed to the employer after the hearing. On March 27, 2007, the employer informed the Appeals Section that the employer had no objection to admitting the doctor's statement as evidence. As a result, Claimant Exhibit A was admitted as evidence.

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.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on March 13, 2006. The claimant worked as a full-time mechanic. Zoss supervised the claimant. At the time of hire, the claimant received information about the employer's attendance policy. The claimant understood an employee

could be discharged if the employee accumulated six attendance points in a year. The employer assesses one point for an absence and two points for a no-call, no-show situation.

During his employment, the claimant was late for work on June 15, November 10 and 23. Since the employer assesses 1/3 point for reporting to work late, the claimant accumulated one point for the three times he was late for work. The claimant was absent from work, but properly notified the employer of his absence on October 23 and November 21, 2006.

On November 28, 2006, the employer talked to the claimant about his attendance because he had accumulated three attendance points. When the claimant indicated he had been to a doctor on November 21, the employer told him that if he gave the employer a doctor's statement, the employer would deduct the point assessed to him on November 21.

For at least the last three weeks of his employment the claimant did not feel well. Sometime prior to December 4, the claimant told the employer he had a doctor's appointment on December 4, 2006. On December 2, a Saturday, the claimant called the employer two hours after he had been scheduled to work to report that he had vehicle problems and did not know if he would be able to get to work. When the claimant did not report to work on December 2 or call the employer again to report he would not be at work at all, the employer considered this absence as a no-call, no-show situation and assessed the claimant two points. The claimant assumed the employer would assess him one point because he had called to report that he did not know if he would be able get to work. The claimant did not get his vehicle fixed until much later on December 2.

The morning of December 4, the claimant left a message that he would not be at work that day. The claimant did not indicate why he was not reporting for work. The claimant still did not feel well and had a doctor's appointment.

On December 5, the claimant reported to work. The claimant had a doctor's statement with him but did not give the employer the statement. (Claimant Exhibit A.) When the claimant talked to Hickman, he understood the employer discharged him because when he called in he failed to tell the employer why he had been unable to work on December 4. When the employer told the claimant the reason for his discharge, the claimant said nothing. The claimant's December 4 absence without any doctor's statement meant the claimant had accumulated six attendance points. On December 5, 2006, the employer discharged the claimant because he violated the employer's attendance policy.

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 section 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 employer established business reasons for discharging the claimant. With the exception of transportation problems on December 2, the claimant missed worked on November 21 and December 4 because of health-related issues. This is supported by a doctor's statement verifying he had been at the doctor's office on November 21 and December 4. (Claimant Exhibit A.) A preponderance of the evidence does not establish that the claimant intentionally failed to report to work. Instead, he was unable to work on November 21 and December 4. The claimant may have used poor judgment when he did not contact the employer a second time on December 2, show the employer the doctor's statement or provide a copy of a doctor's statement to the employer within a reasonable time on December 5, but the facts do not establish that he committed work-connected misconduct. Therefore, as of December 3, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's December 22, 2006 decision (reference 01) is affirmed. The employer discharged the claimant in accordance with its attendance policy, but the claimant did not commit work-connected misconduct. As of December 3, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

_____
Debra L. Wise
Administrative Law Judge

_____
Decision Dated and Mailed

dlw/pjs