

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES L FIFIELD**

Claimant

**APPEAL NO: 11A-UI-04200-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CROP PRODUCTION SERVICES INC**

Employer

**OC: 02/13/11**

**Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge

Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Crop Production Services, Inc. (employer) appealed a representative's March 23, 2011 decision (reference 02) that concluded James L. Fifield (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 27, 2011. The claimant received the hearing notice and responded by calling the Appeals Section on April 18, 2011. He indicated that he would be available at the scheduled time for the hearing at a specified telephone number. When the administrative law judge called that number at the scheduled time for the hearing, the claimant did answer. Contrary to the recommendation on the hearing notice instructions, the claimant's phone was a cell phone. Shortly after the hearing was convened, the claimant's connection was lost or disconnected. The administrative law judge attempted to recontact the claimant, but he did not answer his phone and did not recontact the Appeals Section; therefore, the claimant did not participate in the hearing. Dena Smith of Employer's Unity appeared on the employer's behalf and presented testimony from one witness, Edward Garber. 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:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 30, 2010. He worked full time as a field application equipment operator and shop maintenance worker in the employer's agricultural supply service. His last day of work was January 18, 2011. The employer discharged him on February 7, 2011. The reason asserted for the discharge was excessive absenteeism.

The claimant was expected to put in a minimum of forty hours per week. However, in the weeks leading up to January 18 he had seldom been able to do so as he was spending an increasing amount of time working on his soon to be father-in-law's farm operation. The claimant was

scheduled to be off for vacation for his honeymoon from January 5 through January 16. On January 4 he had a discussion with the location manager, Mr. Garber, in which Mr. Garber indicated that when the claimant returned they would need to have further discussions about how the claimant was going to reconcile his schedule between his personal farm obligations and his employment obligations. He suggested that the claimant should consider quitting, but the claimant indicated he wished to try to work things out.

The claimant did return and work on January 17. On January 18 he came in for work but then left early because of an equipment problem on the farm. He believed he would be back later in the day, but did not return. On January 19 the claimant and Mr. Garber spoke again, and the claimant indicated the problems on the farm were continuing; Mr. Garber asked the claimant to keep him posted.

There were a series of other conversations between the claimant and Mr. Garber between January 19 and February 7, in which Mr. Garber reiterated the need for the claimant to reconcile his personal obligations with his work obligations. On February 3 Mr. Garber suggested that the claimant could go into part-time status, but the claimant declined, indicating again that he wished to try to continue to work out the conflicts. When the claimant still had been unable to resolve his personal obligations to return to work by February 7, Mr. Garber called the claimant to come in for a discussion.

During that discussion the claimant agreed that he just could "do it all," and that he should just quit, but that he did not wish to. Mr. Garber responded that then he would need to make the decision that the claimant's employment would be terminated due to his continued absence from work due to his personal obligations.

The claimant established a claim for unemployment insurance benefits effective February 13, 2011. The claimant has received unemployment insurance benefits after the separation.

#### **REASONING AND CONCLUSIONS OF LAW:**

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 § 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 § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). The claimant's final absences were not excused and were not due to illness or other reasonable grounds. The claimant had previously been made aware that his continued absences were jeopardizing the employment. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's March 23, 2011 decision (reference 02) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 7, 2011. 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. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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