

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW W HENTGES
Claimant

APPEAL NO. 13A-UI-05512-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAPTIVE PLASTICS INC
Employer

OC: 04/07/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 26, 2013, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on June 18, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Julie Ryan participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production utility worker from June 20, 2013, to April 8, 2013. He was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled.

The claimant had signed a last-chance agreement on September 20, 2012, due to his excessive absenteeism, which included absences, leaving work early, and returning late from lunch. This was after he had received prior warnings regarding his attendance. He continued to miss some days of work but called in properly and stated the absences were due to his or his children's illness so he was not terminated.

While the claimant's wife was in alcohol treatment, he was responsible for caring for their 4-year-old and 18-month-old children. This lasted for about two months but even after she released from treatment she did not return home. The situation was stressful and the claimant was already receiving treatment for depression. The claimant took a four-day of vacation to try to recuperate from the stressful situation and was scheduled to return to work on April 8. On the evening of April 7, the claimant's wife called the claimant and told him she had a boyfriend and wanted a divorce, which upset the claimant and led to him feeling anxious and depressed.

On April 8, 2013, the claimant went to his supervisor about 15 minutes after reporting to work and told him that he needed to go home. He explained the situation regarding his wife and that he felt distraught and unable to work. The supervisor told him that he did not know what his attendance situation was, but “okay go ahead and go if you need to leave.” The plant manager had told him before that as long as he avoided receiving another written warning, his employment would not be terminated. He understood he had permission to leave on April 8.

The employer considered the claimant’s leaving on April 8, 2013, to be an unexcused absence in violation of the last-chance agreement and discharged him on April 9, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case. The claimant had explained his situation and was given permission to leave from his supervisor. The supervisor should have told the claimant that leaving would result in an attendance occurrence that could trigger his discharge if that was the situation the claimant was in.

The unemployment insurance rules provide: “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.” 871 IAC 24.32(7). The claimant’s absences were properly reported and were based on reasonable grounds for missing work.

DECISION:

The unemployment insurance decision dated April 26, 2013, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css