

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHNNY D GOREHAM**  
Claimant

**APPEAL NO: 08A-UI-03605-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**S & J TIRE INC**  
Employer

**OC: 08/05/07 R: 04**  
**Claimant: Respondent (2)**

Section 96.5-2- a- Discharge

**STATEMENT OF THE CASE:**

S & J Tire, Inc. (employer) appealed a representative's April 7, 2008 decision (reference 04) that concluded Johnny D. Goreham (claimant) was qualified to receive 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 April 29, 2008. 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. Julie Belger, the human resource manager, appeared on the employer's behalf. 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 employer hired the claimant on November 28, 2007, as a full-time production employee. The employer informed the claimant he had to satisfactorily complete a 90-day probation. During his probation, the claimant had to demonstrate his reliability and dependability by reporting to work as scheduled.

During this employment, the claimant had eight attendance occurrences. Only three of these occurrences occurred when the claimant reported he was ill and unable to work. When the claimant was ill, if he had brought a doctor's statement verifying he had been ill and unable to work, the employer would not have counted the absence as an occurrence.

On February 4 the claimant notified the employer he would be late for work. The claimant reported to work 3.5 hours late. On February 5, the claimant worked two hours and then asked to leave because he was ill. Before the claimant left work, the employer gave him a written warning for excessive absenteeism. The warning informed the claimant that any further

unapproved absences could result in his termination. On February 6, when the claimant did not call or report to work, the employer discharged him.

The claimant reopened his claim for benefits during the week of March 16, 2008. The claimant has not filed any weekly claims.

#### **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. 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 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).

On February 5, when the claimant received a written warning, he knew or should have known his job was in jeopardy. The claimant's failure to call or report to work on February 6 as scheduled amounts to an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for work-connected misconduct. As of February 3, 2008, the claimant is not qualified to receive benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

#### **DECISION:**

The representative's April 7, 2008 decision (reference 04) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of February 3, 2008, the claimant is disqualified from receiving unemployment insurance benefits. 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.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs