

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SATHIENE SAYCHAREUN**  
Claimant

**APPEAL NO: 07A-UI-00235-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACTION WAREHOUSE CO LTD**  
Employer

**OC: 12/10/06 R: 02  
Claimant: Appellant (4)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism  
Section 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Sathiene Saychareun (claimant) appealed an unemployment insurance decision dated January 4, 2007, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Action Warehouse Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 24, 2007. The claimant participated in the hearing. The employer participated through Kent Denning, Personnel Director. 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:**

The issue is whether the employer discharged the claimant for work-connected misconduct and whether he is able and available to work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time tire mouter from earlier in 2006 through November 27, 2006 when he was discharged for attendance. The employer's attendance policy allows three points within the first 90 days and six points within one year. The claimant had written warnings and was suspended for two days due to attendance but the employer could not provide the specific dates. The claimant was in the hospital from October 17, 2006 through October 27, 2006 for surgery and was unable to work until December 27, 2006 when a tube was removed from his stomach.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether the employer discharged the claimant for work-connected misconduct. 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 section 96.5-2-a.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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). When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer participated in the hearing but only provided general allegations without specific details. Consequently, the employer failed to meet its burden to establish disqualifying misconduct and benefits are allowed, provided the claimant is otherwise eligible.

However, the claimant offered evidence that he was not able and available to work from October 17, 2006 through December 27, 2006 due to medical reasons. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking

work. See Iowa Code section 96.4(3) and 871 IAC 24.22. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but that which is engaged in by others as a means of livelihood. 871 IAC 24.22(1). The claimant does not meet the availability requirements of the law for the 11 week period ending December 30, 2006 and benefits are denied for that same time frame.

**DECISION:**

The unemployment insurance decision dated January 4, 2007, reference 01, is modified in favor of the appellant. The claimant's separation was not disqualifying and he qualifies for benefits but due to medical reasons, he was not available to work until after December 30, 2006. Therefore, benefits are allowed as of week ending January 6, 2007.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs