

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JOSHUA H SCHWENNEN
PO BOX 254
JESUP IA 50648

COLLISION SERVICES INC
PO BOX 599
HUDSON IA 50643

Appeal Number: 04A-UI-04963-DWT
OC 04/04/04 R 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Joshua H. Schwennen (claimant) appealed a representative's April 20, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Collision Services, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 25, 2004. The claimant participated in the hearing with Shelly Garbes available to testify on his behalf. Jeanette Dorn, Joe Hoffert, and Roger Sherburne were present on the employer's behalf. During the hearing, Employer's Exhibits One and Two were offered. Employer's Exhibit One was admitted as evidence, but Employer's Exhibit Two was not admitted. 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 February 28, 2003. He worked as a full-time production warehouse coordinator. Sherburne was the claimant's supervisor.

On January 29, 2004, the employer told the claimant when he was unable to work as scheduled the employer required him to call before his shift started. On March 19, 2004, the employer told the claimant that his attendance was unacceptable and gave him a written warning. The employer warned the claimant that the next occurrence of unexcused time off or tardiness would result in his dismissal.

In early March 2004, the claimant's driver's license was suspended. The claimant applied for a work permit so he could drive to work. The claimant had not received the work permit as of March 31, 2004. On March 31, the claimant was arrested for driving with a suspended license and put into jail. The claimant contacted his aunt and asked her to contact the employer to tell the employer he was unable to work as scheduled on April 1. The claimant understood he would not be released from jail until the afternoon of April 1 and the claimant's shift started at 8:00 a.m. The employer received a message around 8:00 a.m. that the claimant's aunt had called to report the claimant was unable to work on April 1, 2004.

The claimant reported to work on April 2. When the employer learned the claimant was not at work on April 1 because he was in jail, the employer considered the claimant's April 1 absence unexcused. The employer discharged the claimant on April 2 for having excessive absenteeism.

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 §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).

The claimant knew or should have known his job was in jeopardy when the employer gave him the written warning on March 19, 2004. The claimant took chances driving when he did not possess a work permit or have anything in writing verifying he could drive back and forth to work. The facts do not establish the claimant made any attempts to get the work permit problem resolved prior to March 31. The evidence also does not indicate the claimant made

any attempted to find another way to work. The claimant gambled that he would not get caught driving with a suspended license. The claimant lost and was arrested on March 31. The claimant's April 1 absence is not excused. Under the facts of this case, the claimant committed work-connected misconduct because he had excessive unexcused absenteeism. As of April 4, 2004, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 20, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 4, 2004. 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.

dlw/b