

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIN B KORSHUN**  
Claimant

**APPEAL NO. 07O-UI-03786-S2T**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**OZARK AUTOMOTIVE  
DISTRIBUTORS INC**  
Employer

**OC: 01/07/07 R: 02  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Ozark Automotive Distributors (employer) appealed a representative's January 30, 2007 decision (reference 01) that concluded Erin Korshun (claimant) was eligible to receive unemployment insurance benefits. A hearing was held on April 30, 2007, following due notice pursuant to Remand Order of the Employment Appeal Board dated April 10, 2007. The claimant participated personally. The employer participated by Whitney Smith, Human Resources Supervisor. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**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 hired on May 8, 2006, as a full-time material handler working evening hours. The claimant received a copy of the company handbook and understood that he was supposed to report all absences to his immediate supervisor.

The claimant improperly reported his absences on December 26 and 27, 2006, but not reporting directly to his supervisor. On December 28, 2006, the claimant had a tooth pulled in the morning but did not notify the employer he would not be at work. On December 29, 2006, the claimant contacted his supervisor. The supervisor told the claimant to bring in a doctor's note. The claimant did not obtain a doctor's note or present it to the employer prior to January 2, 2007. The employer terminated the claimant on January 2, 2007, for abandonment.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was an improperly reported illness which occurred on December 26, 27 and 28, 2006. The claimant's absence does amount to job misconduct because it was not properly reported. The claimant was discharged for misconduct. He is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's January 30, 2007 decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/css