

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN R BLOOD
Claimant

APPEAL NO. 12A-UI-09112-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANNETT HOLDINGS INC
Employer

**OC: 08/28/11
Claimant: Respondent (3)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated July 19, 2012, reference 06, which held the claimant eligible to receive unemployment insurance benefits, finding the claimant was laid off due to lack of work. After due notice was issued, a telephone hearing was held on August 22, 2012. The claimant participated. Participating on behalf of the employer was Ms. Alyce Smolsky, hearing representative, and witnesses Ms. Melissa Zollman, human resource manager, and Mr. James Pfaff.

ISSUE:

At issue is whether the claimant was separated by the employer under disqualifying conditions.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Steven Blood was employed by TMC Transportation, Inc. from May 7, 2012, until June 13, 2012, when he was discharged. Mr. Blood worked as a full-time tire technician and was paid by the hour. His immediate supervisor was James Pfaff.

The claimant was discharged after he had been unable to report for work from June 2, 2012, through June 13, 2012, due to a non-work-related back injury. The claimant had been released with a lifting limitation on June 3; however, the employer was not willing to let Mr. Blood return with a lifting limitation. Mr. Blood kept the employer informed of his medical status. However, the employer made a business decision to terminate Mr. Blood on June 13, 2012.

The claimant was fully released to return to work without limitations effective June 14, 2012.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

The Supreme Court of the Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984), held that excessive unexcused absenteeism is a form of job misconduct. The Court held that the absences must both be excessive and unexcused. The Court further held, however, that absences due to illness and other excusable reasons are deemed excused if the employee properly notifies the employer.

Inasmuch as the evidence in the record establishes that the claimant was discharged by the employer and the claimant was absent due to illness or injury, and the claimant had properly notified the employer of the reasons for his absence, the administrative law judge concludes that the claimant was discharged under non-disqualifying conditions.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for this reason, but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Mr. Blood may have been a sound decision from a management viewpoint, intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated July 19, 2012, reference 06, is affirmed as modified. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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