

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN A SLATER

Claimant

APPEAL NO: 14A-UI-01083-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE RIGHT STUF INC

Employer

OC: 12/29/13

Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's January 22, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because he had been discharged for nondisqualifying reasons. A hearing was initially held on February 19, 2014. The claimant did not participate at this hearing. This matter was reopened and another hearing was held on March 14, 2014. The claimant participated at the March 14 hearing. Danielle Hintz, the human resource representative, and Alysia Cohee, the customer service manager and the claimant's supervisor, appeared at the hearing on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for a current act of work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2011. He worked as a full-time customer service representative. The employer has a no-fault attendance policy. As of October 23, 2013, the claimant had three warnings and six attendance points. The employer's attendance policy discharges employees after they receive three warnings and then accumulate an additional ten attendance points.

The claimant has knee problems. In early October 2013 the claimant was re-enacting a Renaissance sword fight. He slipped and twisted his leg. The claimant's knee cap popped out, but went back into place. For a while after this incident, the claimant used a cane at work.

On October 23, when the claimant stood up at work, his knee cap again popped out. He went to Cohee's office and iced his knee for a while. The next day the employer's vice president told the claimant he needed to see the employer's worker's compensation doctor. The claimant did not want to go, but did. Cohee gave the claimant permission to leave work early on October 24 to see a doctor.

The claimant told the worker's compensation physician what had happened about two weeks earlier. The doctor diagnosed the claimant as having a knee leg sprain. The employer submitted a first report of injury to its workers' compensation insurance carrier. If the employer's workers' compensation carrier, Allied Insurance, determined this was a work-related injury, the claimant's absence on October 24 would be excused, but if Allied Insurance did not determine this was work related, the claimant's October absence would not be excused and he would be assessed another four points.

On December 27, the employer learned Allied Insurance determined the claimant's injury was not work related. This meant the claimant's October 24 absence to see a doctor was not excused. The employer then decided to discharge him for violating the employer's attendance policy. After points were assessed for the October 24, the claimant had three warnings and ten additional attendance points. .

The employer also had unsatisfactory performance issues with the claimant. The recent performance issue occurred on December 9, 2013.

The claimant established a claim for benefits during the week of December 29, 2013. He filed claims for the weeks ending January 11 through March 8, 2014. He received his maximum weekly benefit amount of \$297.00 for each week.

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.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

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. 871 IAC 24.32(8).

Unsatisfactory work performance on its face does not amount to work-connected misconduct. In this case, since the most recent performance issue occurred on December 9. This would not constitute a current act. More importantly, the employer acknowledged the primary reason for the discharge occurred after Allied Insurance determined the claimant's knee injury was not work related.

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 facts established the claimant told the employer and the workers' compensation doctor on October 24 and before that he had sprained his leg and his knee cap popped out about two weeks earlier. The employer insisted that the claimant go to the workers' compensation doctor. The claimant did not misrepresent his injury to the employer.

Since the employer requested and authorized the claimant to see the workers' compensation doctor on October 24, the claimant established reasonable grounds for accumulating four additional attendance points on October 24. While the employer had justifiable business reasons for discharging the claimant because he accumulated ten points after he already received three warnings for attendance, the claimant did not commit work-connected misconduct. As of December 29, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's January 22, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of December 29, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css