

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDAL BRUNING
Claimant

APPEAL NO: 14A-UI-01030-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEN HARTOG INDUSTRIES INC
Employer

OC: 12/29/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 22, 2014 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Christine Koerselman, the human resource representative, and Aaron Rolfes, the production manager, appeared 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 reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in March 2012. She worked full time as a finishing operator. The employer's attendance policy defines excessive absenteeism as an employee having three or more absences within 30 days.

The employer suspended the claimant in April 2013 for excessive absenteeism. The claimant understood her job was in jeopardy after she received the suspension. The employer's policy also requires employees to personally call and talk to management or a human resource representative when they are unable to work as scheduled.

The claimant was ill and unable to work on September 30, December 10, 11, 12 and 13. During her December absences the claimant walked a block every morning to use a co-workers phone so she could call the employer to report she was ill and unable to work. The claimant does not have a phone at her residence. The claimant went to her doctor on Tuesday, December 10. Her doctor gave her a statement that she could not return to work until all of her symptoms were gone. The claimant had the flu.

On Thursday evening, December 12, the claimant gave a co-worker her doctor's statement to give to the employer the next morning. The next day, this co-worker forgot to leave her house unlocked so the claimant could call the employer and report she was unable to work as scheduled. When the claimant found the co-worker's home locked, she walked back to her home at 5 a.m. The claimant was still ill and unable to work. The co-worker gave the employer the doctor's note the morning of December 13, before the claimant's shift started. The employer knew on December 13 that the claimant was still ill and unable to work.

The claimant reported to work on December 16. The employer discharged her for excessive absenteeism because she had already been suspended and failed to personally call the employer on December 13 to report she was unable to work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)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 employer established business reasons for discharging the claimant. The claimant's most recent absences occurred because she was ill and unable to work. The claimant made a reasonable attempt to personally contact the employer each day she was ill in December and unable to work. Even though the claimant was unable to personally call the employer the morning of December 13, the employer knew before her shift started that the claimant was still ill and unable to work. 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 reversed. 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 she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs