

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM D GRISWOLD**  
Claimant

**APPEAL NO: 15A-UI-02630-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BUILDING PRODUCTS INC OF IOWA**  
Employer

**OC: 02/01/15**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's February 18, 2015 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated at the March 31 hearing. Jason Patzner, the director of shop operations, 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 employer hired the claimant in late March 2014 to work as a full-time employee. The claimant received a copy of the employer's handbook when he started working. The employer's attendance policy requires employees to notify the employer no later than 15 minutes after a scheduled shift when they are unable to work as scheduled. The employer's policy also indicates an employee receives three warnings before the employer discharges them for attendance issues. Typically, the employer gives employees a written warning and then a final written before discharging an employee for attendance issues.

On January 12, 2015, the employer talked to the claimant and told him this was his final warning for attendance. The employer gave the claimant this warning because in December he had been late for work five times and failed to notify the employer he would be late. Two or three times in December the employer told the claimant to report to work at 6 a.m. instead of 4 a.m. At the January 12, 2015 discussion, the employer reminded the claimant to notify the employer when he would be late. If the claimant did not call to report he would be late, the employer would not excuse that absence or tardy and would discharge the claimant for unsatisfactory attendance.

The employer documented the January 12 warning but did not have the claimant sign the warning of or give him a copy of the documented discussion. After the January 12 discussion,

the claimant understood he would receive a written warning before the employer would discharge him for attendance issues. .

On January 30, and February 4, 2015, the claimant was 15 minutes late for work. He did not contact his supervisor either day to report he would be late. The claimant's hip and back problems make it difficult sometimes for him to get out of bed. When his hip and back problems bother him, he cannot drive to work without stopping. The claimant was seeing his physician for his hip and back issues. The employer asked the claimant if he needed any accommodation, such as standing on a mat, but the claimant declined a mat.

The employer gave employees the phone number of supervisors to call if they were going to be late or absent. In late January and early February, the claimant's cell phone would not save contact numbers so the claimant did not know who to call unless he looked up the employer's phone number on the Internet.

When the claimant did not call to report he would be late on January 30 and February 4, the employer considered his tardies excessive and discharged him on February 6, 2015, for on-going attendance issues. The claimant established a claim for benefits during the week of February 1, 2015.

#### **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 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 discharged the claimant for business reasons. Since the employer's policy informs employees they will receive three warnings before they are discharged and the employer did not have the claimant sign the documented January 12 warning or give him a copy, the claimant's understanding that he would receive one more warning before the employer discharged him was reasonable.

Since the claimant knew his cell phone did not save contact information, he used poor judgment when he failed to keep a written list of contact information so he could call the employer when he would be late. Based on the fact the employer did not give the claimant a written warning, failed to provide the claimant with a copy of the January 12 discussion and the claimant had medical issues, the evidence does not establish that the claimant intentionally disregarded his duty to the employer when he reported to work late. Under the facts of this case, the claimant did not commit work-connected misconduct. As of February 1, 2015, the claimant is qualified to receive benefits.

**DECISION:**

The representative's February 18, 2015 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of February 1, 2015, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css