



The Claimant had a car accident on the way to work. (29:34; 30:00-30:26)

The Claimant cut his finger at home on December 8, 2014, and had to miss work. (Exhibit A, unnumbered p. 3) He was never asked to report to work each day he was absent for that injury. (38:56-40:31) The Claimant returned to work after the finger incident on December 22, 2014 with his doctor's note. (41:30-41:56; 56:00-56:28)

The Claimant called the Employer 3 times to report his absences after the car accident speaking with Elizabeth. (47:40-47:50; 50:09-51:15)

The Claimant never received any warnings for his attendance. (37:23-37:50)

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code Section 96.5(2)(a) (2013) provides:

*Discharge for Misconduct.* If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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.

The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to

substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Claimant's version of events. The record shows that Mr. Telles was absent for an extended period of time due to a home accident in December for which the Employer did not require him to report his absences each day. He returned to work in that instance with his doctor's note without repercussions.

The Claimant's absences beginning January 20<sup>th</sup> were due to another accident (on his way to work), which involved the same scenario, i.e., absences from work for more than a week, and then returning to work with a doctor's note. The Claimant provided credible testimony that he did report his absences on three occasions, which the Employer denied. However, the Claimant established corroborating evidence via testimony regarding his cell phone, that he did contact the Employer speaking to Elizabeth who gave him the same advice as for his December absences. Mr. Telles had no reason to believe he was required to call in every other subsequent day based on his previous experience.

The Employer's argument that he knew what the procedure was for properly reporting his absences, and yet failed to do so, lacks merit. Based on the Claimant's testimony, we conclude that he did properly report his absences for the purposes of unemployment insurance law. In addition, the fact that the Employer had no signed "Acknowledgement of Receipt" to corroborate their assertion, makes it more probable than not that such a policy was non-existent, or not enforced at the time the Claimant was hired. The court in *Cosper, supra*, held that absences due to illness, which are properly reported, are excused and not misconduct. See also, *Gaborit v. Employment Appeal Board*, 734 N.W.2d 554 (Iowa App. 2007) wherein the court held an absence can be excused for purposes of unemployment insurance eligibility even if the employer was fully within its rights to assess points or impose discipline up to or including discharged for the absence under its attendance policy. Based on this record, we conclude that the Employer failed to satisfy their burden of proving by a preponderance of the evidence that the Claimant committed job-disqualifying misconduct.

**DECISION:**

The administrative law judge's decision dated April 23, 2015 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, the Claimant is allowed benefits provided he is otherwise eligible.

---

Kim D. Schmett

---

Ashley R. Koopmans

---

James M. Strohman

AMG/fnv

**DATED AND MAILED** \_\_\_\_\_

Copies to:

ERASMO TELLES  
711 E BOONE ST  
MARSHALLTOWN IA 50158

IOWA PREMIUM BEEF LLC  
337 L AVE  
TAMA IA 52339

ARON VAUGHN ATTY (C)  
111 E CHURCH ST  
MARSHALLTOWN IA 50158