

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROBERT E WHITE
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NEW SHARON IA 50207

VERMEER MANUFACTURING COMPANY
PO BOX 200
PELLA IA 50219

Appeal Number: 04A-UI-02213-DWT
OC 03/02/03 R 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Vermeer Manufacturing Company, Inc. (employer) appealed a representative's February 26, 2004 decision (reference 08) that concluded Robert E. White (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 1, 2004. The claimant participated in the hearing. Marvin Van Wyk, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on April 8, 1996. He worked as a full-time machinist. The claimant understood any day he was unable to work as scheduled, he needed to contact the employer within 30 minutes of his shift. The claimant's shift started at 6:00 a.m.

The last day the claimant worked was January 13, 2004. He called the employer on the days he was scheduled to work from January 14 through 20, 2004 and reported he was unable to work as scheduled. When the claimant called on January 20, he informed the employer he was going to a doctor. The employer does not have any record of the claimant calling on January 21. The claimant called between 7:30 and 7:45 a.m. on January 22. Pursuant to the employer's policy, when an employee does not call the employer within the time guideline, the employer considers this as a no-call/no-show incident. When the claimant called on January 22, he had gone to his doctor and obtained a doctor's excuse that indicated he could not work January 14 through January 23, 2004. The claimant did not call by 6:30 a.m. because he overslept.

The claimant did not call or report to work on January 23, 2004. The afternoon of January 22, the employer sent the claimant a letter indicating his employment was terminated because he had not called or reported to work for two consecutive days.

The claimant established a claim for unemployment insurance benefits during the week of March 2, 2003. He reopened his claim during the week of February 1, 2004. He filed claims for the weeks ending February 7 through 28, 2004. He received his maximum weekly benefit amount of \$314.00 during these weeks. The claimant established a subsequent benefit year during the week of February 29, 2004. He filed claims for the weeks ending March 6 through 27, 2004. He received his maximum weekly benefit amount of \$250.00 during these weeks.

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. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(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 claimant asserted he called his supervisor on January 21 by 6:30 a.m. to report he would not be at work as scheduled. Since the employer recorded all the other days the claimant called to report he was unable to work, it is doubtful the employer's records are incorrect. Any evidence does not support the claimant's assertion that he called and talked to his supervisor by 6:30 a.m. on January 21. The claimant changed his testimony as to what happened on January 22, but finally admitted he did not call by 6:30 a.m. because he overslept. Based on the above, the claimant's testimony that he called his supervisor on January 21 by 6:30 a.m. is not credible.

Even though the employer decided to discharge the claimant the afternoon of January 22, the claimant did know this when he failed to call or report to work on January 23, 2004. The claimant did not give the employer the doctor's excuse he received on January 20, 2004.

Since the claimant had always previously called within 30 minutes when he was unable to work, he understood the importance of properly notifying the employer when he was unable to work. The claimant's failure to properly notify the employer by 6:30 a.m. on January 21, 22 and 23 amounts to an intentional and substantial disregard of the employer interests. The employer discharged the claimant for work-connected misconduct. As of February 1, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending February 7 through March 27, 2004. The claimant has been overpaid a total of \$2,256.00 in benefits he received for these weeks.

DECISION:

The representatives' February 26, 2004 decision (reference 08) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 1, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending February 7 through March 27, 2004. He has been overpaid a total of \$2,256.00 in benefits he received for these weeks.

dlw/kjf