

**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**

**KENNETH D KNOLL  
1802 W STATE ST  
MARSHALLTOWN IA 50158**

**COOPER MANUFACTURING COMPANY  
410 S 1<sup>ST</sup> AVE  
MARSHALLTOWN IA 50158 5000**

**Appeal Number: 04A-UI-11305-DWT  
OC: 09/26/04 R: 02  
Claimant: Appellant (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Kenneth D. Knoll (claimant) appealed a representative's October 14, 2004 decision that concluded he was not qualified to receive unemployment insurance benefits, and the account of Cooper Manufacturing Company (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 9, 2004. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one

represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 21, 1979. The claimant worked as a full-time press operator. During the last 18 months of his employment, the claimant used all his available FMLA to help care for his elderly parents. After the claimant's mother broke her hip about 18 months ago, the claimant did everything he could to make sure his mother returned home and did not go to a care center. The claimant's mother is in a wheelchair. When the claimant's father experiences his own medical problems, he is unable to care for his wife. The claimant then takes care of his mother. The claimant used most of his FMLA to take care of his mother.

The claimant and his parents can only afford having an outside person help the claimant's parents by coming to their home one to three hours a week. The claimant has a brother in Urbandale, but he was undergoing medical treatments for his own medical issues in July and August 2004, and was not available to help the claimant take care of their parents during this time frame.

The claimant's primary objective was to keep his parents at their home as long as possible. His mother's physician encouraged the claimant to keep his mother at home because she would not do well at a nursing home.

Toward the end of his employment, the claimant kept asking the employer when he would again be eligible for FMLA. The claimant never learned when he was again eligible for FMLA. In June or July 2004, the employer gave the claimant a warning about his attendance. The

claimant understood his job was in jeopardy because he missed so much work to take care of his parents.

On August 16, 2004, the claimant notified his supervisor he was unable to work as scheduled and probably would not be able to return to work until Wednesday or Thursday because his father's medical problems flared up and he was unable to take care of the claimant's mother. As a result of his parents' medical issues, the claimant stayed home and took care of his parents. The claimant's supervisor confirmed that with these additional absences, the employer would discharge the claimant.

On August 17, after the claimant took his father to a doctor's appointment, he stopped at work to pick up his paycheck. The employer then asked if he would sign a resignation letter. The claimant submitted a resignation letter without thinking but understood a resignation would look better than a discharge on his employment record. The claimant could have returned to work on August 18, 2004.

The claimant considered the employer to have discharged him for continued attendance problems. After his employment ended, the claimant made arrangements with his brother, who successfully completed his own medical treatment, to take care of their parents so the claimant could work full-time. The claimant also talked to a relative about helping his parents on an emergency basis. Prior to late August, the relative was reluctant about helping the claimant and his parents.

When the claimant established a claim for unemployment insurance benefits during the week of September 26, he was available to work full-time. .

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The evidence indicates the claimant did not voluntarily quit his employment. The claimant only submitted a resignation letter after he had been told he would be discharged because of his absences the week of August 16 and 17. Submitting a resignation letter does not change a discharge into a voluntary quit. The evidence establishes the claimant reasonably believed the employer discharged him the week

of August 16. The claimant's supervisor agreed on August 16 the employer's next step in its disciplinary procedure would be the claimant's termination. The employer initiated the separation and discharged the claimant as of August 17, 2004.

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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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 employer may have had compelling reasons for discharging the claimant because he was absent too much from work. As of August 16, the claimant properly notified the employer he was unable to work as scheduled because he had to take care of the medical needs of his parents. Under these conditions, the claimant did not intentionally or substantially disregard the employer's interests. The claimant unsuccessfully tried to make the necessary arrangements to have his parents cared for while he was at work. When the claimant worked for the employer, he knew of no one he could ask to look after his parents on an emergency basis. Since the employer did not choose to participate in the hearing, the evidence does not establish

that the claimant committed work-connected misconduct. As of September 26, 2004, the claimant is qualified to receive unemployment insurance benefits.

As November 9, the claimant's parents still live at home, but the claimant now has other relatives who have agreed and are able to help take care of his parents so the claimant can work full-time instead of taking off time from work to care for his parents.

**DECISION:**

The representative's October 14, 2004 decision (reference 01) is reversed. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for business reasons that do not constitute work-connected misconduct. As of September 26, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant. As of September 26, 2004, the claimant had made the necessary arrangements for other relatives to take care of his parents. As of September 26, the claimant is able to and available to work.

dlw/