IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TRAVIS T SCHAFF
Claimant

ARCHER-DANIELS-MIDLAND COMPANY
Employer

APPEAL NO. 11A-UI-10911-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/10/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Travis T. Schaff (claimant) appealed a representative's August 8, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Archer-Daniels-Midland Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 12, 2011. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on or about April 5, 2010. He worked full-time as a feed loader operator at the employer's Cedar Rapids, Iowa, ethanol plant. His last day of work was June 29, 2011. The employer discharged him on July 11, 2011. The reason asserted for the discharge was excessive absenteeism.

The claimant worked rotating shifts; one week working a 7:00 a.m.-to-3:00 p.m. shift, the next a 3:00 p.m.-to-11:00 p.m. shift, and the next an 11:00 p.m.-to-7:00 a.m. shift. He had missed two days of work in December 2010 due to illness, which he properly called in and reported. He was also suspended by the employer for three days in December due to an inspection sheet issue.

In about late April, the claimant had been approved for vacation to begin after he got off work on the morning of June 29, from which he was scheduled to return for a 7:00 a.m. shift on July 6. However, during the claimant's shift that ended on the morning of June 29, he was involved in an accident on the employer's rail yard that resulted in damage to a hose. As a result, while he was still on vacation on July 5, the employer called the claimant and told him to report for a

meeting at 7:00 a.m. on July 6, rather than reporting for his regular shift. When the claimant reported for that meeting, he was informed that he was suspended for three days due to the accident; he was to return to work for a 3:00 p.m. shift on July 11.

On July 8 the employer called the claimant and told him to report for another meeting at 7:00 a.m. on July 11. When he did so, he was told he was being discharged due to his attendance. Other than the two sick days in December 2010, the four days of approved vacation, and the six total days of suspension, the only other day the claimant had missed work was on or about June 24, 2011. On that date, the claimant had again properly reported an absence due to illness; nothing had been said to him upon his return from the illness that there was any concern about the absence.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that the employer has the right to expect of employees, or in 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to approved vacation are excused. Absences due to being on a disciplinary suspension imposed by the employer cannot be treated as unexcused absences. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); Cosper, supra; Gaborit v. Employment Appeal Board, 734 N.W.2d 554 (Iowa App. 2007). The employer has failed to establish there was a final or current incident

of unexcused absenteeism. The employer has failed to meet its burden to establish misconduct. Cosper, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's August 8, 2011 decision (reference 01) is reversed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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