

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID D COURBAT
Claimant

APPEAL NO. 07A-UI-10708-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAGEN INC
Employer

**OC: 10/07/07 R: 03
Claimant: Appellant (2)**

Section 96.5-2 - Discharge

STATEMENT OF THE CASE:

David D. Courbat (claimant) appealed a representative's November 9, 2007 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Fagen, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 14, 2007. The claimant participated in the hearing. The employer responded to the hearing notice, but was not available for the hearing. A message was left for the employer to contact the Appeals Section immediately if the employer wanted to participate in the hearing. The employer did not contact the Appeals Section again.

Although an issue of whether the claimant filed a timely appeal was noted on the hearing notice, this was done in error because the claimant's appeal clearly shows he filed his appeal at his local Workforce office on November 16, 2007, or prior to the November 19 deadline. As a result, the claimant filed a timely appeal and is not an issue for 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:

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

FINDINGS OF FACT:

The claimant started working for the employer on January 17, 2007. The claimant worked as a full-time journeyman electrician. The claimant traveled to various job sites during his employment. The claimant understood that as long as he notified the employer before a shift began when he was unable to work as scheduled, that absence would not affect his continued employment.

During his employment, the employer talked to claimant once about his attendance. On September 13, the claimant was ill. He notified the employer before his shift started that day he

was ill and unable to work as scheduled. On September 18, the claimant received a call that his uncle had a stroke and went to the hospital. The claimant notified the employer he was unable to work because of a family medical emergency. On September 22, the claimant had vehicle problems and could not get to work. Again, the claimant notified the employer that he had transportation problems and was unable to get to the jobsite. On September 29, the claimant asked in advance for the afternoon off so he could attend his uncle's funeral. Before his shift, the claimant called to take off time to get his brother, who was stranded on his way to the funeral, and learned the employer had cancelled work at the claimant's jobsite for everyone because of rain. The claimant notified the employer before his shift on October 1 that he was unable to work as scheduled that day. The claimant had to drive his brother to the town that repaired his car, which broke down, on the way to the funeral.

When the claimant reported to work on October 2, the employer gave him a written warning for excessive absenteeism. The employer also gave him a one-day suspension for attendance issues.

On October 5, the claimant again had transportation problems. As soon as the claimant realized he had car problems, he contacted the employer to report he would be late for work. The claimant made arrangements to use another vehicle to get to the worksite and reported to work late by two hours. After the claimant reported to work late on October 5, the employer discharged him for excessive absenteeism. When the claimant asked if his absences were excused or unexcused, the employer did not answer his question. The claimant understood that as long as he notified the employer before his shift when he was unable to work, being absent from work was not a problem.

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 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).

After the claimant received a warning and a one-day suspension on October 2, the claimant should have realized his job was in jeopardy for attendance issues. The facts indicate the employer had justifiable business reasons for discharging the claimant. The evidence does not establish the claimant intentionally or substantially disregarded the employer's interests when he was absent from work or did not report to work on time. Anytime the claimant did not work as scheduled, he contacted the employer so the employer knew he would be late or unable to work a particular day. Without the employer's testimony, it is not known what affect the claimant's absence had on the employer. The claimant's failure to report to work on time on October 5 was beyond the claimant's control. The claimant did not intentionally fail to report to work on time. Based on the evidence presented during the hearing, the claimant did not commit work-connected misconduct. As of October 7, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's November 9, 2007 decision (reference 02) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 7, 2007, 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css