

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAN D DIETRICK**  
Claimant

**APPEAL NO. 07A-UI-00159-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FELDMEIER IOWA**  
Employer

**OC: 11/26/06 R: 03  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated December 29, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 23, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Ken Lamb participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a welder from September 26 to November 24, 2006. He was informed and understood under the employer's work rules that he was on a 90-day probationary period and was required to call in if he was not able to work as scheduled.

The employer discharged the claimant on November 24 for excessive absenteeism, because he had been absent five times and left work early five times during his employment. The final incident was when he was absent from work on November 24. The claimant called in properly and reported that he would not be at work because he was sick. He went to the doctor, was diagnosed with strep throat, and received a doctor's excuse. The claimant's supervisor was also dissatisfied with the claimant's behavior at work. He made annoying comments to his supervisor and once made a motion like he was throwing something at a supervisor. There is no evidence, however, as to when this conduct occurred and the final incident was an incident of absenteeism.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

## REASONING AND CONCLUSIONS OF LAW:

The Issue in this case is whether the claimant was discharged for work-connected misconduct.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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

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

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

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 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, no current act of work-connected misconduct as defined by the unemployment insurance law has been established. The final incident that led to the claimant's discharge was an absence due to legitimate illness which was properly reported to the employer.

The employer's account is not presently chargeable for benefits paid to the claimant, since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment. There is no provision in Iowa law for exempting an employer from charges for discharging an employee during an established probationary period.

**DECISION:**

The unemployment insurance decision dated December 29, 2006, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw