

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD M RALSTON
Claimant

APPEAL NO: 12A-UI-05120-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PROGRESSIVE FOUNDRY INC
Employer

OC: 04/08/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Richard M. Ralston (claimant) appealed a representative's April 30, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Progressive Foundry, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 23, 2012. The claimant participated in the hearing. Darek VanKirk 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.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 8, 2011. Since about February 5, 2012 he worked full time as a grinder on a 9:00 a.m. to 7:00 p.m. schedule. His last day of work was April 2, 2012. The employer discharged him on April 5, 2012. The reason asserted for the discharge was excessive absenteeism.

The employer's policy provides that if an employee has been absent more than three days in a 12-month period, his further absences will be considered unexcused unless he can provide a doctor's note, and that for the fourth and fifth occurrences of an unexcused absence in the 12 months he would receive written warnings, for a sixth occurrence he would receive a suspension, and for a seventh he would be discharged.

The employer considered the claimant to have had five unexcused absences through February 25, 2012: the first was December 14, 2011 which was for illness (bronchitis), the second was February 18, 2012 due to personal or family issues, and the third through fifth were February 23, February 24, and February 25, when the claimant's fiancée left with his children and he felt too "depressed" to report for work; he did not see a doctor, and there was no medical

diagnosis of actual “depression.” When the claimant returned to work on February 27, he was given his first warning.

On March 13 the claimant did not report to work until about 1:00 p.m.; a tardy of that length is treated as a full absence under the employer’s policies. The reason he was that late is that he and his fiancée were dealing with child custody issues and the fiancée was late getting to the claimant, and once the claimant took off late for work, he had a flat tire which additionally delayed him. As a result of this incident, the claimant was given a second warning on March 14.

The claimant was then absent on April 3 and April 4. The claimant did call in for those absences; the reasons for both of these absences were that the claimant had custody of his children those days but did not have childcare arrangements. If the claimant would have missed only one day, April 3, and would have reported for work on April 4, he would have been suspended at that time for having had an additional occurrence after the March 14 warning. However, since the claimant had an additional absence on April 4, when the claimant came into work on April 5 he was discharged.

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); Iowa Code § 96.5-2-a.

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 which 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 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. 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).

Excessive and unexcused absenteeism can constitute misconduct. 871 IAC 24.32(7). While the administrative law judge would consider the December 14 absence to be excused for purposes of unemployment insurance review as it was for a bona fide medical condition even if he did not have a medical excuse covering that day, the claimant’s other absences were excessive and were not for bona fide medical conditions and are considered to be unexcused. Absences due to issues that are of purely personal responsibility are not excusable. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984); *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984). Further, the claimant’s final absence was not excused and was not due to illness or other reasonable grounds. The claimant had previously

been warned that future absences could result in termination. *Higgins*, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's April 30, 2012 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 5, 2012. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs