

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BILLY E RICE**  
Claimant

**APPEAL NO: 09A-UI-16559-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOUSBY MACK INC**  
Employer

**OC: 10/04/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's October 27, 2009 decision (reference 01) that determined the claimant was not qualified to receive benefits, and the employer's account was exempt from charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on December 28, 2009. The claimant participated in the hearing. Deb Williams, the claimant's supervisor, and Karen Holiday 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:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on October 23, 2008. He worked as a full-time technician. On August 11, the employer gave the claimant a written warning for excessive absenteeism. The claimant received the August 11 written warning after he sent Williams a text message that he was unable to work that day because he was ill. The August 11 warning informed the claimant that further attendance issues could result in a suspension without pay or his termination.

On August 20 and September 9, the claimant was not at work because of a dental appointment or an appointment with his attorney. The employer understood the claimant made advance arrangements to have this time off for these appointments. On September 15, late at night, the claimant notified the employer he was ill and unable to work on September 16. On September 17, the claimant went to the hospital because of the abdominal pain he was experiencing. The claimant informed the employer he was ill and unable to work. The claimant did not report to work on September 18. When the claimant returned to work on September 21, he provided the employer with a doctor's statement verifying he had been ill and unable to work these three days.

On October 1, the claimant sent Williams a text message informing her that he was unable to work as scheduled because of a sick child. When the claimant's phone was not working, he could still send text messages. Although Williams had received text messages from the claimant before, she did not receive his October 1 text message.

The claimant was not at work on October 1 because he had taken his child to the doctor the day before. The physician did not know if the child had H1N1, but asked the claimant to take care of his child the next day because the claimant's wife was pregnant. Her physician did not want her to take any unnecessary risk of taking care of their sick child and possibly getting the H1N1 flu. The claimant had a doctor's note verifying he had been asked to take care of his child on October 1, 2009.

On October 2, 2009, the employer discharged the claimant because of his continued absenteeism that the employer considered excessive.

#### **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).

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 facts establish the claimant notified the employer when he was unable to work. The claimant did not intentionally fail to work as scheduled. Instead, he was absent because either he was ill or a child was ill. When the claimant had appointments, he made advance arrangements to be off work for these appointments. Based on the facts of this case, the employer established compelling business reasons for discharging the claimant. The claimant did not, however, commit work-connected misconduct. Therefore, as of October 4, 2009, the claimant is qualified to receive benefits.

**DECISION:**

The representative's October 27, 2009 decision (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of October 4, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css