

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PHETSAMONE S PHONGSA**  
Claimant

**APPEAL NO: 11A-UI-03401-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BELLE/SIOUX CITY RIVERBOAT**  
Employer

**OC: 02/06/11**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's March 16, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Karen Johnson and Orlando Jordan appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on April 28, 2010. He worked as a full-time account team assistant. The employer's attendance policy informs employees they receive a half point for reporting to work late and one point for an absence. The employer gives a verbal warning when an employee accumulates 7 points, a written warning at 8 points, a three-day suspension at 9 points and discharges an employee for excessive absenteeism when the employee accumulated ten points in a rolling calendar year.

After the claimant reported late for work on December 30, he had accumulated nine attendance points. The claimant's shift started at 4:45 a.m. and he punched in at 5:02 a.m. When the claimant came to work on December 31, the employer gave him a three-day suspension and warned him that if he had another absence, he would be discharged.

On February 7, 2011, the claimant properly notified the employer he was ill and unable to work. When his supervisor did not call him back, the claimant knew he was discharged because he had accumulated ten attendance points. During his employment, the claimant had been late for work 13 times and was absent four days. The employer discharged the claimant as of February 7, 2011, when he accumulated ten attendance points.

**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 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).

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. 871 IAC 24.32(8).

The claimant knew or should have known his job was in jeopardy on December 31 when he received a three-day suspension for accumulating too many attendance points in less than a year. During the claimant's employment, he demonstrated he was not reliable by the number of times he reported to work late. However, the tenth point the claimant accumulated occurred when he was ill and unable to work. Since the claimant properly reported this absence, the claimant did not commit a current act of work-connected misconduct. Therefore, the claimant is qualified to receive benefits as of February 6, 2011.

**DECISION:**

The representative's March 16, 2011 determination (reference 01) is affirmed. The employer established justifiable business reasons for discharging the claimant when he accumulated ten or more attendance points in less than a year. The claimant's most recent absence occurred because he was ill and unable to work. Under these circumstances, the claimant did not commit a current act of work-connected misconduct. Therefore, as of February 6, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/pjs