

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW L HUBBS
Claimant

APPEAL NO: 12A-UI-13293-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUNNINGHAM INC
Employer

OC: 10/21/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 6, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had had been discharged for disqualifying reasons. The claimant participated in the hearing. Glen Burgett, the human resource manager, appeared on the employer's behalf. During the hearing, Claimant Exhibit A was offered and admitted as evidence. 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 employer hired the claimant on November 11, 2011, to work as a full-time mechanic. Even though the employer does not have a written attendance policy, the employer reviews an employee's attendance over a three-month time frame.

The claimant was absent on July 2, 3 5 and 6. He had his wisdom teeth extracted and told the employer before July that this dental procedure had been scheduled. The claimant understood that missing work these days would not count against him or put his job in jeopardy. The claimant gave the employer his dentist's July 3 note stating the claimant should be excused from working on July 2 and 3, but he could return to work on July 5. (Claimant Exhibit A.)

The claimant did not return to work on July 5 because he had problems with a dry socket. The employer recorded the claimant's July 5 absence as a no-call, no-show incident. The claimant was also absent on July 16 for medical reasons.

On August 1 and 2, the claimant reported he was unable to work because he was ill. On August 29, the claimant left work early because his father was hospitalized. The claimant did not work on August 30 and 31 because his father was hospitalized and gravely ill. The claimant left work early on September 20 for personal reasons.

On October 1, the claimant received a written warning for habitual absenteeism and low productivity. In July, August and September, the claimant was absent 80 scheduled hours. The warning informed the claimant that further occurrences could result in his termination.

The claimant was absent on October 9 because he was ill and in the hospital. On October 22, when the claimant was at a gas station and on his way to work, his car stopped working. The claimant called his supervisor to report he had car problems and would be late or absent. After his supervisor told the claimant work was slow and he did not need to bother to report to work, the claimant had his car towed and he did not report to work. Hours later, his supervisor contacted the claimant and asked him to report to the office the next day because the employer was going to terminate him. After the claimant learned he would be discharged, he did not report to work on October 23.

The employer discharged the claimant on October 23, 2012, for excessive absenteeism during the last three months of his employment. The employer decided that after the claimant received the October 1 warning he did not show any improvement in his attendance and discharged him.

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 employer established business reasons for discharging the claimant. Since July, the claimant missed over 80 hours of work. The July and August absences occurred because the claimant had his wisdom teeth extracted (which the employer knew about in advance), the claimant was ill or his claimant's father was ill and hospitalized. After the claimant received the October 1 warning, he understood he must improve his attendance or he could be terminated.

On October 9, the claimant was ill and unable to work. On October 22 when his car broke down, if his supervisor would not have told him work was slow and it was not a problem for him to be absent, the claimant could have found a ride to work and reported to work after his car was towed.

The claimant established that his absences were either for illness or other reasonable grounds that he properly reported. Therefore, even though the employer considered the claimant's absenteeism excessive, the claimant did not commit work-connected misconduct. As of October 21, 2012 the claimant is qualified to receive benefits.

DECISION:

The representative's November 6, 2012 determination (reference 01) is reversed. The employer established business reasons for discharging the claimant. The claimant's absences do not amount to work-connected misconduct. Therefore, as of October 21, 2012, the claimant is qualified to receive benefits. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs