

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-01509-SWT
OC 01/04/04 R 04
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge
Section 96.5-5-b - Receipt of Deductible Worker's Compensation Benefits
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 3, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 4, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Wendy Chapman participated in the hearing on behalf of the employer. The record was left open to receive information from the worker's compensation carrier about the payment that he was receiving. The documents received were marked Exhibit One and were mailed to the claimant to allow him an opportunity to object to the documents. No objection was received, and the documents are, therefore, admitted into evidence.

FINDINGS OF FACT:

The claimant worked for the employer as a route sales representative from October 6, 1999 to January 2, 2003. The employer discharged the claimant because the employer believed the claimant was absent from work without notifying the employer on January 3, 5, and 6, 2004. The claimant was absent from work for legitimate medical reasons on these days and was seen by a doctor in regard to his medical problems on January 6. The claimant did notify the employer regarding these absences.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 4, 2004. His weekly benefit amount was determined to be \$300.00. He filed for and received a total of \$900.00 for the weeks ending January 17, 24, and 31, 2004. During the same time period, the claimant received payment for temporary total disability. He received \$80.62 per day for the period from January 8 through February 6, 2004.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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, (8) 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(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, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. The evidence establishes that the final instances of absenteeism were due to legitimate medical reasons and the claimant notified the employer about the absences.

The next issue is whether the claimant is ineligible to receive unemployment insurance benefits effective January 8, 2004, because he received workers' compensation for temporary disability.

Under Iowa Code Section 96.5-5-b, an individual shall be disqualified for benefits for any week with respect to which the individual is receiving or has received payment in the form of compensation for temporary disability under the unemployment insurance law of any state or under a similar law of the United States.

As a result, the claimant was not eligible for benefits for the weeks ending January 17, 24, and 31, 2004, and was overpaid \$900.00 in benefits for those weeks.

DECISION:

The unemployment insurance decision dated February 3, 2004, reference 01, is modified in favor of the employer. The claimant is qualified to receive unemployment insurance benefits based on the reasons for his separation from employment. The claimant was not eligible for benefits for the weeks ending January 17, 24, and 31, 2004, and was overpaid \$900.00 in benefits for those weeks, due to the receipt of temporary total disability benefits.

saw/b