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

ROBERT E MCGREGOR
1501 – 14TH ST
DES MOINES IA 50314

ACTION WAREHOUSE CO LTD
1701 E EUCLID
DES MOINES IA 50313

Appeal Number: **04A-UI-12101-DW**
OC: 10/17/04   R: 02
Claimant: Appellant (1)

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 are 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

STATEMENT OF THE CASE:

Robert E. McGregor (claimant) appealed a representative's November 2, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Action Warehouse Company Ltd. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing in Des Moines was held on December 7, 2004. The claimant participated in the hearing. Bob Grett, a supervisor, 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 January 2, 2004. The claimant worked as a full-time warehouse laborer. The two or three months of his employment, Brian Bunn was the claimant's supervisor.

The employer gave the claimant a copy of its no-fault attendance policy. The employer's attendance policy informs employees that if they accumulate six attendance occurrences within a year, the employer discharges the employee for excessive absenteeism. An employee knows the status of his attendance occurrence because the employer gives the employee a verbal warning at three occurrences; a written warning at four occurrences; a suspension at five occurrences and terminates an employee at six occurrences. The claimant understood the employer's policy, but did not necessarily agree with the policy.

During his employment, the claimant properly notified the employer he was ill and unable to work on April 30, 2004, and received one occurrence. On May 4, the claimant was late for work and received a half occurrence. On July 23, the claimant properly notified the employer he was ill and could not work. On August 3, the claimant again properly notified the employer he was ill and unable to wok. The claimant received an occurrence for both of these incidents. On September 17, the claimant did not call or report to work and received one attendance occurrence. Since the claimant had accumulated 4.5 attendance occurrences, the employer gave him a written warning on September 20. The employer warned him that further attendance occurrences could result in his termination.

On October 11, 2004, the claimant notified the employer he was unable to work for personal reasons. The claimant's car was not working and he did not have transportation to get to work. The claimant contacted the employer on October 12 to see if he needed to report to work. The employer confirmed he was suspended on October 12 because he had accumulated 5.5 attendance occurrences. On October 13, the claimant properly notified the employer he was again unable to work for personal reasons. The claimant still did not have transportation to get to work. The employer discharged the claimant on October 13, 2004, for violating the employer's policy for excessive absenteeism.

Before Bunn became the claimant's supervisor, the claimant's supervisor gave the claimant a ride to work. Bunn would not do this. The claimant did not believe the employer should have assessed him an occurrence the day he was unable to work when his child had an emergency medical situation (the claimant's July 23 or August 3 absence). The employer's no-fault does not consider the reason for an employee's absence. Prior to October 13, the claimant walked to work when he did not have transportation, but it was about ten miles to work from the claimant's residence.

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. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence

or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(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).

The claimant knew or should have known on October 12, 2004 when he was suspended, he would be discharged the next time he was absent if he was absent again before January 2, 2005. On October 11, 2004, the claimant's vehicle broke down and he did not have any way to get to work unless he walked. Even though the claimant has walked to work in the past, he did not attempt to walk to work on October 11 or 13. The claimant had arranged for a ride to work on October 12, but the claimant did not go to work because the employer suspended him that day. As of October 12, the claimant served a one-day suspension for accumulating too many attendance points. The claimant's next step was termination. When the claimant could not make arrangements for anyone to take him to work on October 13, he did not walk to work when his vehicle was not working. Even though the claimant's first supervisor gave him a ride to work, the employer was not obligated to transport the claimant to work. The claimant had the responsibility of making sure he worked as scheduled. The claimant failed to take reasonable steps to work as scheduled. The employer suspended him on October 12. Under the facts of this case, the employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's November 2, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 2, 2004. 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.

dlw/kjf