

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

MARIO BRADFORD  
627 SUMNER  
WATERLOO IA 50703

EAGLE OTTAWA LLC  
4455 REMINGTON RD  
WATERLOO IA 50703

Appeal Number: 05A-UI-08632-DWT  
OC: 12/26/04 R: 03  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Mario Bradford (claimant) appealed a representative's August 12, 2005 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Eagle Ottawa LLC (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, a telephone hearing was held on September 7, 2005. The claimant participated in the hearing. Tracy Keller, the human resource generalist, appeared on the employer's behalf. During the hearing, Employer's Exhibit One and Two were offered and admitted as evidence. 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 April 11, 2002. The claimant worked full time. The employer's written attendance policy informs employees that if an employee accumulates seven attendance occurrences in a rolling calendar year, the employer will discharge the employee.

On June 27, 2005, the claimant received a final written warning for accumulating six attendance occurrences. The claimant accumulated his sixth attendance occurrence when he notified the employer on June 23 he was unable to work as scheduled. On July 6, 2005, the claimant was late for work and received a half occurrence for this incident. The employer gave the claimant another written warning on July 8 that informed the claimant he had accumulated 6.5 attendance occurrences. The employer warned the claimant that if he had any other occurrences he would be discharged.

On July 18, the claimant did not call or report to work. The claimant was scheduled to work at 6:00 a.m. His child became sick overnight and the claimant took her to the emergency room around 5:00 a.m. The claimant understood he would be discharged for attendance issues and did not call or report to work again. On July 19, 2005, the employer sent the claimant a letter informing the claimant he was discharged as of July 18 for violating the employer's attendance policy.

With the exception of July 18, 2005, the claimant contacted the employer when he was unable to work as scheduled. The claimant did not usually call when he was late for work. Prior to July 18, the claimant asked the employer if some of his absences could be considered under the Family Medical Leave Act because of his family's medical issues. The employer indicated this was not possible. One of the claimant's points occurred when the claimant worked on January 7 and 8, 2005. Since the employer did not have a record of the claimant punching in to work these days, the claimant received a half point each day. The claimant asserted he had punched in both days. Other employees reported problems with the employer's time clock and the time clock's failure to accurately record punches. As a result of employees' complaints in May the employer installed a manual time clock in addition to the time clock employees had been using.

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).

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 his job was in jeopardy on July 8 when the employer warned him that if he called in sick or reported to work late one more time, he would have accumulated seven attendance points and would be discharged. Since the claimant's job was in jeopardy, the claimant was put on notice that he needed to take extra steps to preserve his employment. The claimant's failure to notify the employer about his child's illness amounts to an intentional disregard of the employer's interests. Even though the claimant took his child to the hospital, he had time to make a quick phone call to let the employer know what was happening. The claimant had a duty to inform the employer he was unable to work as scheduled and did not. The evidence indicates the claimant committed work-connected misconduct on July 18, 2005. The claimant is not qualified to receive unemployment insurance benefits as of July 17, 2005.

#### DECISION:

The representative's August 12, 2005 decision (reference 03) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 17, 2005. 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/tjc