

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL D GEE
Claimant

APPEAL NO. 07A-UI-03261-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABC BEVERAGE MANUFACTURER'S INC
Employer

**OC: 03/04/07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 28, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 16, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Brenda Dixon participated in the hearing on behalf of the employer with a witness, Bob Gomez.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a production utility worker from September 23, 2003, to March 1, 2007. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination if they accumulated six attendance occurrences in a rolling 12-month period, which began on January 1, 2007.

As of January 29, 2007, the claimant had three attendance occurrences. Before the claimant's shift started, his wife, who is pregnant, slipped and fell in a parking lot. She required medical treatment; and due to complications with her pregnancy, the doctor excused the claimant from working to care for his wife for three days—January 29, 30, and 31. The claimant called in properly and brought in a doctor's excuse covering those days.

On February 4, the claimant was hurt when the four-wheeler he was riding tipped over in a ditch. The claimant went to work on February 5 but left early to seek medical attention when he had problems performing his job. He was excused from working by a doctor because of the injuries he sustained on February 5, 6, and 7. The claimant called in properly and brought in a doctor's excuse covering those days.

The employer discharged the claimant under its attendance policy for exceeding the allowable points under the attendance policy because the absence could not be covered under the Family and Medical Leave Act (FMLA).

REASONING AND CONCLUSIONS OF LAW:

The 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 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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

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. No willful and substantial misconduct has been proven in this case. The final absences were due to legitimate medical reasons and were properly reported.

DECISION:

The unemployment insurance decision dated March 28, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw