

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH J HICKS
Claimant

APPEAL NO. 08A-UI-02686-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SSW ENTERPRISES INC
COLLIS INC**
Employer

**OC: 12/02/07 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Joseph J. Hicks (claimant) appealed a representative's March 10, 2008 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from SSW (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 2, 2008. The claimant participated in the hearing. Michele Anderson 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

After two prior periods of employment with the employer, the claimant most recently returned to working for the employer on January 2, 2008. He worked full time as a powder coat line operator in the employer's steel product manufacturing facility. As of about January 9, 2008 his schedule was 7:00 a.m. to 3:00 p.m., Monday through Friday. His last day of work was February 13, 2008. The employer discharged him on that date. The reason asserted for the discharge was excessive absenteeism.

While attendance had not been the reason for the termination of the claimant's most recent previous period of employment, he had attendance problems. When in late December 2007 the employer discussed with the claimant the possibility of rehiring him, it was on the condition that he could not have any attendance issues within his first 90 days. The claimant agreed, indicating that this should not be a problem as he had moved from his mother's home in Illinois about 45 minutes away to an apartment in Clinton, near the employer.

The claimant was absent on January 28, 2008 for personal reasons. He informed the employer that it was because he was moving. The further explanation was that he had previously been informed that he was being evicted for failure to pay rent, but had hoped his landlord would

allow him to stay as he had become reemployed. However, on or about January 27, he received a three-day notice to vacate the premises. On February 1 the claimant was about three and a half hours tardy; however, since it was a day with bad winter weather, the employer assessed the claimant only one point, rather than two; it also did not assess him any points for leaving work early on January 29 due to a winter storm, as well as one other day he was absent due to a winter storm. On February 4, he was absent due to personal business. On February 7, his supervisor reminded him that was missing too much work. However, again on February 12 the claimant was absent due to car problems.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

Iowa Code § 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.

Absences due to issues that are of purely personal responsibility including transportation are not excusable. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984); Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). The claimant's final absence was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future absences could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's March 10, 2008 decision (reference 02) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 13, 2008. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css