

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON J GEBEL
Claimant

APPEAL NO. 10A-UI-11159-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEHIGH CEMENT COMPANY
Employer

OC: 07/04/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Aaron J. Gebel (claimant) appealed a representative's August 6, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Lehigh Cement Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 29, 2010. The claimant participated in the hearing. Ron Guthrie 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:

The claimant started working for the employer on August 15, 1994. He worked full-time as a process attendant/bridge crane operator in the employer's Mason City, Iowa plant, working on the second shift. His last day of work was June 18, 2010. The employer suspended him pending investigation that day, modified the suspension to pending termination on about July 1, and discharged him on July 15. The reason asserted for the suspension and discharge was excessive absenteeism.

In January 2010 the employer adopted a nine-point attendance policy. Beginning March 30, 2010, the claimant began having occurrences, largely due to his family and domestic situation, including allegations of abuse on his part and drug use by his wife. The couple separated and the claimant moved, accounting for one of the claimant's absences. After an absence on May 19 for taking his dog to a veterinarian, the employer gave the claimant a written warning on May 22 advising him that he was at 5.5 points, and that further absences within the next six months could lead to discharge.

On June 12 the claimant was absent because of a domestic issue. On June 15, June 16, and June 17, the claimant called in absences due to jail and court issues relating to violation of a no-contact order. The four points assessed for these days of absence brought the claimant up to and over the nine-point level. As a result, when the claimant returned to work he was suspended and was subsequently discharged.

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.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). Absences due to issues that are of purely personal responsibility 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). While the claimant's absences might have been primarily due to a difficult personal situation, the claimant's final absences were not excused. The claimant had previously been warned that future absences could result in termination. Higgins, supra. The employer discharged the claimant for reasons amounting to work-connected misconduct. However, nothing in this decision precludes the parties from reaching an agreement under which the claimant might be reinstated to his employment; the period of unemployment would then simply be treated as a period of disciplinary suspension for misconduct. 871 IAC 24.32(9).

DECISION:

The representative's August 6, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 18, 2010. 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/kjw