

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHAD KONONOV**  
Claimant

**APPEAL NO. 07A-UI-09954-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OLSEN ENGINEERING LP**  
Employer

**OC: 09/23/07 R: 04  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

Chad Kononovs (claimant) appealed an unemployment insurance decision dated October 18, 2007, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Olsen Engineering LP (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 13, 2007. The claimant participated in the hearing. The employer participated through Becky Meyer, Human Resources Manager. 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:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time machine operator from November 16, 2006 through September 27, 2007 when he was discharged for excessive unexcused absenteeism. The employer has an attendance point system wherein one unexcused absence results in three points. The disciplinary policy provides that employees will be given a verbal warning at 15 points, a written warning at 18 points, a suspension and final warning at 21 points before termination occurs at 24 points. No warnings were issued to the claimant prior to his termination on September 25, 2007. The employer testified the claimant should have received a verbal warning on July 9, a written warning on July 16, a suspension on July 17 and should have been terminated on July 30, 2007. The employer was at least two months behind in issuing warnings to its employees, which is the only reason the claimant was not terminated earlier. The claimant was absent for three days of bereavement leave ending September 19, 2007. His wife's grandmother passed away and although employees are only allowed three days for immediate family members, the employer allowed the claimant to take the full three days. The claimant did not work on September 20 and 21 because his wife was suicidal over her grandmother's death. He called the employer on September 24, 2007 and left

a message asking if he had been terminated. The claimant reached the human resources manager on September 25 and was advised he had been terminated.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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.

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. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The claimant was discharged on September 25, 2007 for excessive unexcused absenteeism.

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.

Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. Id. Although the claimant had several absences, he did not receive any warnings for attendance before he was terminated. While an employee owes a duty to an employer, an employer also owes a duty to its employees. It is inherently unfair for an employer to discharge an employee without notice for violation of the attendance policy when the employer fails to comply with its own execution of that same policy. The employer failed to meet its burden. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated October 18, 2007, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css