

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOUY T KHAMSAI
Claimant

APPEAL NO. 09A-UI-16860-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO
Employer

**Original Claim: 10/11/09
Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's October 28, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for non-disqualifying reasons. A telephone hearing was held on December 15, 2009. The claimant participated in the hearing. Carolyn Cross, the personnel manager, 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 29, 2008. He worked as a full-time production operator. The claimant worked the 11:00 p.m.-to-7:30 a.m. shift. The claimant received information that, in accordance with the employer's attendance policy, if his attendance points totaled a negative number, he would be discharged. The employer starts employees with eight points. For each unexcused absence, a point is deducted.

As of November 14, 2008, the claimant had zero points for attendance. When the claimant reported to work on November 6, 2008, the employer suspended him from work until November 30, 2008. When the claimant reported to work before November 30, the employer sent him home.

On November 30, the claimant called at 10:10 p.m. to report he would not be at work. He did not give the employer a reason for not reporting to work. The employer deducted a point for this absence. On December 1, 2008, the claimant did not call or report to work. The employer deducted another attendance point for this absence. As of December 2, 2008, the claimant had a negative two for attendance points. The employer sent the claimant a letter on December 2 informing him he had been discharged because he violated the employer's attendance policy by having too many unexcused absences. The termination letter told the claimant that if he had

any questions, he could contact one of two people. The claimant did not contact the employer after November 30, 2009.

If the claimant had provided a doctor's excuse for his November 30 and December 1, 2008 absences, the employer could have excused these absences. The claimant may not have been discharged if he provided verification that his November 30 and December 1 absences should have been excused instead of unexcused.

The claimant established a claim for benefits during the week of October 11, 2009. He has filed for and received benefits since October 11, 2009.

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 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 or should have known his job was in jeopardy when the employer suspended him for excessive absenteeism November 16 through November 30, 2009. Although the claimant notified the employer on November 30 that he was unable to work, he did not call the employer on December 1 or provide any reason for his absence these two days. The claimant violated the employer's absenteeism policy with his excessive unexcused absenteeism. The employer established the claimant was discharged for work-connected misconduct. As of October 11, 2009, the claimant is not qualified to receive benefits.

The issue of overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's October 28, 2009 decision (reference 01) is reversed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 11, 2009. 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. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is Remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw