

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HERBERT J LOWTHER
Claimant

APPEAL NO. 07A-UI-06685-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA AG LLC
Employer

**OC: 06/03/07 R: 02
Claimant: Appellant (1)**

Section 96.5-2 a- Discharge

STATEMENT OF THE CASE:

Herbert J. Lowther (claimant) appealed a representative's July 5, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Iowa Ag LLC (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 24, 2007. The claimant participated in the hearing. Peter DeCoster, the general 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:

Most recently the claimant started working for the employer again on May 12, 1994. The claimant worked various jobs, but most recently he worked as a welder.

The claimant experienced personal problems in January 2007 and started missing a great deal of work. From January 29 through May 31, 2007, the claimant worked an average of 14.3 hours a week. When the claimant came to work, he often left work early without authorization to do so.

In early May, DeCoster talked to the claimant about his poor attendance. DeCoster told the claimant that even though he was a long-time employee, he was not allowed to come and go as he pleased. The employer warned the claimant that if he missed another day of work, he would be terminated.

Shortly after this verbal warning, the claimant connected with a cousin he had never met but had some common life experiences. The two decided to meet in Wyoming. The claimant left work on May 21 to meet his cousin. The claimant did not talk to DeCoster about taking time off; he just left and did not return until May 31, 2007. On May 31, 2007, when the claimant asked

DeCoster if he still had a job, he did not. The employer ended the claimant's employment because of excessive unexcused absenteeism.

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. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(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 acknowledged that when he went to Wyoming, he was not thinking about the consequences of his actions. At that time, the claimant's personal issues controlled and skewed his thought processes. When the claimant talked to the employer on May 31, he did not expect to have a job because the employer had already given him many opportunities to remain employed and the claimant did not "straighten up" until it was too late. The employer discharged the claimant because he had too many unexcused absences and failed to talk to the employer about taking time off before he left work for a week to ten days. The evidence establishes that the claimant committed work-connected misconduct. Therefore, as of June 3, 2007, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 5, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 3, 2007. 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css