

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EZZARD C LONG

Claimant

APPEAL NO. 13A-UI-14196-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABM JANITORIAL SERVICES NORTH

Employer

OC: 12/01/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 23, 2013, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on January 21, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Sandy Linsin participated in the hearing on behalf of the employer with witnesses, Tammy Abdulghani, Erica Amos, and John VanKamen. Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a cleaner for the employer from May 15, 2012, to November 20, 2013. He was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and would be terminated after three days of absences without notice to the employer.

The claimant was suspended for three days on September 18, 2013, because of absences on May 14, 15, and 19 and on September 15, 16, and 17. When he returned from his suspension on September 24, he was informed it was his final warning about his attendance and any further disregard of the attendance rules would result in a suspension or possible termination of employment. His absences in September were due to properly reported illness.

The claimant was absent from work due to illness with proper notice to the employer on November 24 and 25. The claimant spoke to his supervisor, Erica Amos, on the phone on the morning of November 25 and explained that he had food poisoning. Texting was a permissible method of communication with the supervisor. Later that day, the claimant texted Amos to find out if he was suspended or could return to work on November 26. Initially, Amos responded that he was not suspended, but then texted that he was suspended.

The claimant thought he was suspended as had happened in September even though Amos never said anything about how long he was suspended. He did not report to work or call in on November 26, 27, or December 1.

On December 2, he texted Amos to see if he could report to work. Amos responded that she had not had the chance to talk to her manager, John VanKamen, yet.

The claimant then tried to reach VanKamen to find out if he could return to work. Messages were left. Eventually, he and VanKamen talked on December 5, 2013, and VanKamen told him that he was terminated due to his absences without calling in.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. The claimant was put on notice that his job was in jeopardy due to his absenteeism. I believe the claimant's testimony that Amos texted that he was suspended, but his conduct in deciding without being told that he was on a three-day suspension was unreasonable. If he was ready to go back to work on November 26, he should have reported to work on that date and found out what the actual punishment was or called and talked personally with a manager to find out what his true employment status was. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated December 23, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css