IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

AVERY M LAMBUTH
Claimant

BLACKHAWK FOUNDRY & MACHINE CO
Employer

APPEAL NO: 09A-UI-11312-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/07/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Avery M. Lambuth (claimant) appealed a representative's August 4, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Blackhawk Foundry & Machine Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 24, 2009. The claimant participated in the hearing. Jean Ruefer 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 September 22, 2008. He worked full time as a core maker in the employer's gray inductile iron foundry. His regular schedule was to work on the second shift, Monday through Friday and some Saturdays. His last day of work was January 7, 2009. The employer discharged him on that date. The reason asserted for the discharge was excessive absenteeism.

Prior to December 22, 2008 the claimant had four absences, two of which were to take his wife to the hospital, one of which was waiting to be seen at a walk-in dental clinic for a long-existing dental issue, and one due to a transportation issue. As a result of these absences during his probationary period, on December 22 he was given a written warning. The normal next step would have been a three-day suspension.

On December 25 the employer began a holiday shut down; on December 24 the employer instructed the employees, including the claimant, that work would resume on January 5, 2009. On January 5 the claimant was a no-call, no-show for work. Under the employer's attendance policy, of which the claimant was on notice, a no-call, no-show results in skipping the next step of discipline. On January 6 the claimant did call in to report that he would be absent; he

indicated that he was taking the day as "vacation." The claimant had not previously requested or been granted vacation for either January 5 or January 6. He indicated to the employer that the reason he had not returned on January 5 was that he was with his brother who was still on a holiday shutdown elsewhere. At the time of the hearing the claimant offered that a further reason he had not returned was that he was dependent on his brother's car, which had broken down and was not repaired until late on January 6, and that he could not call the employer to indicate he would be absent on January 5 because he had no phone and no money to use a phone or buy a phone card. He did not offer this explanation when he spoke to the employer on January 7 or during the fact-finding interview with the Claims representative.

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 which 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 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. 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).

Excessive unexcused absences can constitute misconduct, in order to establish the necessary element of intent, the final incident must have occurred despite the claimant's knowledge that the occurrence could result in the loss of his job. Cosper, supra; Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The claimant had prior unexcused absences and had been given a warning. The claimant's final absences were not excused and were not due to illness or other reasonable grounds. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's August 4, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of January 7, 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs