

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

WILLIAM C CRALL JR
1555 – 576TH AVE
ALBIA IA 52531

VERMEER MANUFACTURING
COMPANY INC
PO BOX 200
PELLA IA 50219

Appeal Number: 05A-UI-01942-JTT
OC: 01/16/05 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32-7 – Excessive Unexcused Absences

STATEMENT OF THE CASE:

William Crall filed a timely appeal from the February 14, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 17, 2005. Mr. Crall participated in the hearing. Vermeer participated through Dan Gau, Human Resources Manager for the Agriculture Division. Exhibits One, Two, and Four through Six were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: William Crall was employed by Vermeer Manufacturing as a full-time, first-shift assembler from

January 17, 1994 until January 18, 2005, when Michael Schuring, Area Manager, discharged him for excessive absenteeism.

Vermeer has a written attendance policy set forth in an employee handbook. Mr. Crall received a copy of the handbook. Under the policy, an employee must notify his manager within 30 minutes of the start of a shift if he needs to be absent or late. If the direct supervisor is not available, the employee is expected to leave a message on the supervisor's voice mail. If the direct supervisor is away from the plant, the employee must call another designated telephone number. The employer utilizes a point system that designates certain absences or tardiness as "occurrences." A tardy of less than 30 minutes is not an occurrence. A tardy greater than 30 minutes or an absence not authorized as Family and Medical Leave (FMLA) is an occurrence. Two occurrences within a 90-day period or four occurrences within a year are considered excessive.

The last absence that prompted Mr. Schuring to discharge Mr. Crall occurred on Monday, January 17, 2005. On that date, Mr. Crall called in to work at 3:30-3:45 a.m. and left a message for his supervisor, advising that he was unable to make it into work due to ice-covered, impassable roads. Mr. Crall's shift was scheduled to begin at 5:00 a.m. Mr. Crall lives near Albia and must travel approximately five miles on gravel road to reach a hard surface highway. Vermeer is located in Pella. The distance from Mr. Crall's home to the plant is approximately 27 miles. Mr. Crall had attempted to leave his home on Sunday, January 16, to get supplies for his family, but lost control of his all-wheel-drive vehicle on the ice-covered road and rolled the vehicle into a ditch. Thereafter, Mr. Crall was dependent on his parent's car, which he did not believe would fare any better on the roads. When Mr. Crall arrived for work on January 18, 2005, Mr. Schuring advised him that he was being discharged based on poor attendance. There was no other basis for the discharge.

Mr. Crall's attendance was an issue before the absence on January 17, 2005. On June 21, 2004, Mr. Crall was 45 minutes tardy. On July 21, 2004, Mr. Crall called in absent because he had a water leak in his basement, could only turn off the water at the main turn-off, and did not want to leave his children without water. Mr. Crall stayed home and worked on fixing the water leak. On July 22, Mr. Crall called in absent because he had detected a natural gas leak in his home and did not want to leave his son in the home alone with the leak. Mr. Crall stayed home to fix the gas leak. On July 23, Mr. Crall was a "no-call, no-show." He stayed home to work on the water and gas issues in his new residence and did not want to leave his children in the residence without these matters being resolved. On July 26, Mr. Crall was 61 minutes tardy, due to a hailstorm that forced him to take shelter while he was enroute to work. On September 30, Mr. Crall went home sick. On October 1, Mr. Crall called in sick. On October 6, Mr. Crall was 11 minutes tardy. In the week prior to the absence that prompted his discharge, Mr. Crall was absent on January 12-13, due to ice-covered impassable roads. The weather on those dates had been so severe that it prevented mail service. Mr. Crall received written warnings based on his absences or tardiness on the following dates: July 26, 2004, October 4, 2004, and October 13, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Crall was discharged for misconduct in connection with his employment based on excessive unexcused absences.

Iowa Code Section 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(7), (8) provide:

(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.

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Because the claimant was discharged, the employer bears the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for Mr. Crall's absences to constitute misconduct that would disqualify him from receiving unemployment insurance benefits, the employer must show that the absences were excessive and that the absences were unexcused. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the employer must first show that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32-8. Absences related to issues of personal responsibility such as lack of transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

Based on the evidence in the record and the applicable law, the administrative law judge concludes that Mr. Crall's absence from work on January 17, 2005 was an excused absence. The day before the absence, Mr. Crall had traveled the same road he would need to travel to work and had gone into the ditch, due to the ice-covered condition of the road. Between that day and the next, there was no significant change in the weather condition. Mr. Crall's absence on January 17, 2005 was not due to any intentional act on his part. On the contrary, it was due to severe weather and impassable road conditions, things that were clearly beyond his control. Mr. Crall reported the absence to the employer in a timely fashion.

Having concluded that the absence that prompted Mr. Crall's discharge was an excused absence, the evidence in the record fails to establish a "current act" of misconduct on the part of Mr. Crall that would disqualify him for benefits. See 871 IAC 24.32(8). Accordingly, no disqualification will enter. Having concluded there was no current act of misconduct, the administrative law judge need not address whether prior absences were unexcused or excessive. See 871 IAC 24.32(7).

DECISION:

The representative's decision dated February 14, 2005, reference 01, is reversed. The claimant was discharged from his employment for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements.

jt/kjf