

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL W TORY**  
Claimant

**APPEAL NO: 09A-UI-16041-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BURROWS PAPER CORP -ADP**  
Employer

**OC: 09/27/09**  
**Claimant: Appellant (2/R)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's October 22, 2009 decision (reference 01) that concluded he was not qualified to receive benefits, and the employer's account was exempt from charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on December 1, 2009. The claimant participated in the hearing. Diane Adkisson, the human resource and payroll administrator, 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 November 6, 1995. He worked as a full-time production laborer. The claimant has had on-going attendance issues since 2007 when he started having medical issues. On April 28, 2009, the employer warned the claimant his job was in jeopardy because of continuing attendance issues.

The claimant did not report to work on August 10 and 11. He properly notified the employer he was unable to work these days. These absences amounted to his third fifth attendance incident. The employer prepared a written warning and planned to suspend him for three days for on-going attendance issues. When the claimant returned to work on August 17, he left work after working an hour. He told the employer he could not continue working that day. As a result of the claimant leaving work early, the employer did not have an opportunity to present him with the suspension. The claimant saw his doctor on August 18. The employer received a doctor's statement excusing the claimant from work through August 21. The employer gave the claimant paperwork to complete for short-term disability. When the employer received the completed paperwork from the claimant's doctor, the claimant was excused from work until August 30, 2009.

On August 25, Adkisson sent the claimant FMLA paperwork for his doctor to complete. The employer requested that the employer receive the completed paperwork by September 10, 2009.

On September 1, the employer received a doctor's statement that excused the claimant from working until September 8, 2009. On September 8, the employer received another doctor's statement excusing the claimant from working until September 14. On September 14, the claimant notified the employer that he was unable to work and was going back to see his doctor. The employer reminded the claimant that he still needed to get his FMLA paperwork to the employer.

The employer received another doctor's statement excusing the claimant from work September 14 through 16. On September 17, the claimant returned to work. The claimant's supervisor assigned the claimant to a machine that the claimant did not like to work on. Instead of working his September 17 shift, the claimant told his supervisor he could not do the work and was going back to see his doctor. The claimant also told his supervisor he would not be at work the next day, September 18. The claimant left early on September 17. The employer called the claimant and again told him that the employer needed his completed FMLA paperwork and a statement from his doctor about his continuing condition.

On Monday, September 21, the claimant reported he was going to see his doctor on September 22 because he had been unable to get in before. The claimant saw his doctor on September 24. While at the appointment the claimant understood he did not need to get a doctor's statement because his FMLA would cover his recent absences. The claimant also understood his doctor had already faxed the completed FMLA paperwork to the employer. The claimant did not verify when his doctor faxed the completed FMLA paperwork or that the employer received it.

On September 28 when the employer talked to the claimant, he indicated he still was not well. Although the claimant had seen his doctor on September 24, he understood the employer wanted to know when his next appointment was scheduled. As result of this understanding the claimant told the employer he did not have an appointment, but would get an appointment soon. On September 30, the employer discharged the claimant for continuing attendance issues, failing to submit completed FMLA paperwork and for being uncooperative by failing to see his doctor in a timely manner. The employer concluded the claimant had not seen his doctor after he left work on September 17.

#### **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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

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 may have used poor judgment when he did not verify the date his physician faxed his completed FMLA paperwork or that the employer received this information. The evidence, however, does not establish that the claimant failed to make timely doctor appointments or that his absences were not excused. The claimant had on-going health issues and sincerely believed his doctor had sent in the completed FMLA paperwork. As a result, the facts do not establish that he committed work-connected misconduct. Therefore, as of September 27, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements.

Since the claimant was off work because his doctor had excused him from work, the issue of when the claimant was able to and available for work is remanded to the Claims Section to determine. If the claimant's physician has released him to work, he should provide a copy of that release to his local Workforce office.

**DECISION:**

The representative's October 22, 2009 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of September 27, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant. Since the claimant was under his doctor's care, the issue of when the claimant is able to and available of for work is remanded to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css