

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS B LARSON
Claimant

APPEAL NO. 09A-UI-11888-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MONGOOSE INC
Employer

OC: 07/05/09
Claimant: Appellant (2)

Section 96.5-2-a - Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 7, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 2, 2009. Claimant participated. Employer participated by Janet Dandeu, store manager. The record consists of the testimony of Travis Larson and the testimony of Janet Dandeu.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was hired on April 22, 2008, as a full-time maintenance person. One of his most important job duties was unloading the semi truck that would deliver supplies to the restaurant.

The events that led to the claimant's termination began on June 24, 2009. The claimant was ill and called one of the managers at the restaurant at 6:30 a.m. to report that he would not be in for his shift, which began at 6:30 a.m. June 24, 2009, was on a Wednesday. The claimant then called again at 4:30 p.m. and was told that he could not return to work unless he had a doctor's note. The claimant informed the employer that he did not have any money to see a doctor until he got his paycheck on Friday. The claimant went to pick up his paycheck on Friday and was informed that he had been terminated.

REASONING AND CONCLUSIONS OF LAW:

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Excessive unexcused absenteeism is one form of misconduct. However, the absenteeism must be both excessive and unexcused. Personal illness is considered an excused absence if the employee follows the employer's notification process.

In this case, the claimant was terminated because he was absent for three days and had not provided a doctor's note to the employer. Apparently the claimant had accumulated a lot of sick days due to a back problem and the employer believed that this absence was more of the same. Janet Dandea testified that she needed the claimant to be working because he was the only employee who could unload the truck, a vital task in the employer's business. The claimant found himself in a difficult position because he could not get the doctor's note until he got paid, which was not until Friday. By then Ms. Dandea had decided that the claimant would be discharged.

The evidence has failed to show a current act of misconduct. The absences that led up to the claimant's termination were excused as the claimant was ill. He notified the employer that he

was sick and unable to work. As there is no current act of misconduct, benefits will be allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated August 7, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs