

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL F COLE JR
Claimant

APPEAL NO: 12A-UI-00007-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIMBERLY CHRYSLER PLYMOUTH INC
Employer

**OC: 11//27/11
Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 23, 2011 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Jackie Nolan, an Employers Unity representative, appeared on the employers' behalf. Brent Seibel and Marty Beard testified on the employer's behalf. Carol Power was also present on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant on August 11, 2011, to work full time in the detail department. The claimant's scheduled hours changed. On November 30, 2011, the claimant was scheduled to report to work at 9:00 a.m. The employer needed the claimant to come in early on November 30, 2011. On November 29, Seibel told the claimant he wanted the claimant to report to work at 7:00 a.m. the next day. The claimant acted like he did not want to report at 7:00 a.m., but told the employer he would be at work by 7:00 a.m.

Before the claimant left work, he told a co-worker, Marty Beard, that he probably would not be at work by 7:00 a.m. the next day. On November 30, the claimant reported to work by 9:00 a.m. He told the employer he had overslept. The claimant did not call when he woke up to let the employer know this. The employer discharged the claimant on November 30. The employer concluded the claimant intentionally failed to report to work at 7:00 a.m. even though the employer had directed him the night before to report at 7:00 a.m., and not 9:00 a.m.

The claimant established claimant for benefits during the week of November 27, 2011. He has filed weekly claims and received benefits since November 27, 2011.

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. 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 evidence establishes the claimant intentionally failed to report to work at 7:00 a.m. on November 30 as Seibel had instructed him to do the day before. Since the claimant was scheduled to work at 9:00 a.m., he did not believe it was necessary for him to report to work at 7:00 a.m., even though his boss, Seibel, told him to report at 7:00 a.m. instead 9:00 a.m. The claimant's assertion that he had to take his girls to school on November 30 is possible. But if this was true, it is difficult to understand why he did not tell the employer he had this parental obligation. The evidenced indicates that when he told Beard he would not be work at 7:00 a.m., he did not know his daughters would be staying overnight with him. The claimant's testimony about having to take his daughter's to school on November 30 or that he overslept on November 30 is not credible. The credible testimony establishes that on November 29 after Seibel told the claimant to report to work at 7:00 a.m. the next day, he had decided he was not going to do this. The claimant's failure to report to work at 7:00 a.m., without a reasonable explanation as to why he did not, shows an intentional and substantial disregard of the employer's interests. The claimant committed work-connected misconduct. As of November 27, 2011, the claimant is not qualified to receive benefits.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's December 23, 2011 determination (reference 02) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 27, 2011. 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. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css