

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

YUSEF R HARRIS
5718 LINCOLN AVE
DES MOINES IA 50319

MOSAIC
c/o TALX – JOHNSON & ASSOC
PO BOX 6007
OMAHA NE 68106 0007

Appeal Number: 04A-UI-11143-DWT
OC: 09/19/04 R: 02
Claimant: Respondent (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 are 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Mosaic (employer) appealed a representative's October 5, 2004 decision (reference 01) that concluded Yusef R. Harris (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 8, 2004. The claimant participated in the hearing. Lynn Corbeil, attorney at law, represented the employer. Jesse Weldon, the direct support manager, and Carol Mau, the executive director, 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.

ISSUES:

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

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on March 15, 2002. He worked as a full-time direct support associate. David Wilcox was his supervisor. The claimant received the employer's handbook, which informs employees the employer expects employees to work as scheduled and excessive absenteeism can be grounds for termination.

During the course of his employment, the claimant received a number of warnings for attendance problems. On September 16, 2004, the employer gave the claimant his final warning after the claimant again failed to work as scheduled and did not properly notify his supervisor when he was unable to work as scheduled. The September 16 warning informed the claimant that any other violation, including excessive absenteeism or an arrest for a crime or traffic offense would result in his termination. The claimant, however, understood his job was in jeopardy if he did not properly report when he would be absent from work.

The claimant was scheduled to work the morning of September 19 at 7:00 a.m. The claimant called the employer at 4:47 a.m. on September 19 to report he was unable to work as scheduled because he had cold and flu-like symptoms. The claimant also reported that he had been arrested for an OWI on September 18.

On Friday, September 17, the claimant went to a birthday party for a sister who lives out of town. The claimant had some alcoholic beverages at the party. When the claimant was driving home about 1:00 a.m. on Saturday, September 18, a law enforcement officer stopped him. As a result of a traffic stop, the claimant was cited for operating a motor vehicle while intoxicated.

On September 21, the employer decided to discharge the claimant for excessive absenteeism. Even though the claimant received the September 16 warning, he again had an unexcused absence on September 19. The claimant had been absent from work 13 times since January 4. Six of his absences were for a reported illness. During his employment, the claimant did not provide the employer with any doctor's excuses or inform the employer he had any on-going medical problems. After the employer discharged the claimant, the claimant presented information about a chronic medical condition that he started to treat after September 21, 2004.

The claimant established a claim for unemployment insurance benefits during the week of September 19, 2004. He filed claims for the weeks ending October 2 through 30, 2004. The claimant received his maximum weekly benefit amount of \$310.00 during each of these weeks.

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 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).

Although the claimant asserted he did not understand his job was in jeopardy after September 16 if he was again absent from work, the September 16 written warning informed him of this fact. The claimant also failed to recognize that if he had not been drinking and driving, he would not have been cited for an OWI on September 18. The claimant asserted he did not report to work because of cold and flu-like symptoms. This is troublesome because the claimant was well enough to attend his sister's birthday party and drink alcoholic beverages on Friday night, but was not well enough to go to work on Sunday morning. Since the claimant asserted he had been ill since September 16, without a doctor's statement verifying he was ill and unable to work, the claimant's testimony is not credible. A preponderance of the evidence establishes that even though the claimant properly reported he was unable to work on September 19, the evidence does not establish that he was ill and unable to work as scheduled. Even though the claimant has a chronic medical condition that he must treat, the claimant did not even acknowledge that he had this medical issue prior to September 21. The claimant never told the employer he was ill because of a medical condition. The symptoms the claimant described he had on September 19 could be associated with drinking too many alcoholic beverages. A preponderance of the evidence establishes the employer discharged the claimant for reasons that constitute work-connected misconduct. As of September 19, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending October 2 through 30, 2004. The claimant has been overpaid a total of \$1,550.00 in benefits he received for these weeks.

DECISION:

The representative's October 5, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 19, 2004. 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 claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending October 2 through 30, 2004. He has been overpaid \$1,550.00 in benefits he received for these weeks.

dlw/kjf