

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS P QUICK
Claimant

APPEAL NO. 13A-UI-05159-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FERRARA CANDY COMPANY
Employer

OC: 04/07/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 26, 2013, reference 01, which concluded that the claimant was ineligible for unemployment insurance benefits. A telephone hearing was held on June 5, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Robin Travis, human resources manager, participated in the hearing on behalf of the employer. The record consists of the testimony of Robin Travis; the testimony of Travis Quick; Claimant's Exhibits A-C; and Employer's Exhibits 1-11.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

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

The employer manufactures candy and fruit snacks at its plant located in Creston, Iowa. The claimant was hired on October 22, 2012. He was a full-time production worker. His last day of work was April 9, 2013. He was terminated on April 11, 2013.

The incident that led to the claimant's termination occurred on April 9, 2013. The claimant had injured himself before going to work on April 9, 2013. The claimant tried to work but was unable to do so and as a result he left work early. The employer has a no fault attendance policy. The claimant was at 7 ½ points as of March 19, 2013. He left work early that day because he was sick and the employer was concerned about food safety. Eight points leads to termination. When the claimant left early on April 9, 2013, he reached eight points and was terminated as a result.

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 disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. Although excessive unexcused absences can constitute misconduct, the employer must show that the absences were both excessive and unexcused. In addition, the final instance of absenteeism must itself be unexcused. The claimant's final absence was due to personal illness properly reported. This is considered an excused absence under Iowa unemployment insurance law and cannot disqualify

the claimant from receiving unemployment insurance benefits. The employer has every right to institute an attendance policy and to discharge employees who violate that policy. But not every attendance based discharge will disqualify a claimant from receiving unemployment insurance benefits. In this case, the employer has not shown excessive unexcused absenteeism. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The unemployment insurance decision dated April 26, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs