

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT D SIPES
Claimant

APPEAL NO: 14A-UI-01025-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILLARD REFRIGERATED SERVICES INC
Employer

OC: 12/29/13
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's January 21, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because he had had been discharged for nondisqualifying reasons. The claimant participated in the February 18 hearing. Tim Ash, the general manager, appeared 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 qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in September 2004. He worked full time as an auditor. The employer's no-fault attendance policy considers an employee to be excessively absent when employees accumulate ten attendance points in a rolling calendar year.

As a result of on-going absences, the employer gave the claimant a final written warning on September 12, 2013. The claimant received this warning because his September 9 absence was his eighth attendance point in a rolling calendar year. The claimant properly reported his September 9 absence when he unexpectedly took his wife to her doctor for pre-term labor issues. The claimant was absent on October 7 for the same situation with his wife. He again properly notified the employer that he was unable to work. No one talked to him about his job after his October 7 absence. Since the claimant had received final written warnings in the past and nothing had happened, he did not understand his job was in jeopardy.

On November 20, the claimant properly notified the employer that he was unable to work. The claimant's wife was unable to care for their newborn son and other sons on November 20. The claimant stayed home to take care of his infant son and family on November 20. When the claimant was absent on November 20, the employer's attendance system generated the claimant's termination for his tenth absence in a rolling calendar year. On November 21 the claimant talked to Ash and Deana LaRue, the human resource representative, about submitting

FMLA paperwork to cover his November 20 absence. The claimant had 15 days to submit the completed FMLA paperwork, but Ash suggested he do this as soon as possible. The claimant was suspended and could not return to work until his November 20 absence was covered by FMLA.

The claimant was unable to see the doctor until Monday, November 25. The physician indicated the paperwork would be completed and sent to the employer. The claimant contacted the doctor's office on December 2 and received a receipt that the completed FMLA paperwork had been sent to the employer. The claimant called LaRue and was told she had not yet received the completed FMLA paperwork. The claimant gave LaRue the physicians's phone number for her to check on the status on the FMLA paperwork. On December 9, the claimant again talked to LaRue and was told she still had not received the completed FMLA paperwork. LaRue advised the claimant to again contact the doctor about the FMLA paperwork.

The claimant again contacted the doctor's office. On December 14, he received a receipt from the doctor's office indicating the paperwork had again been sent to the employer. On Monday, December 16, when the claimant talked to LaRue he understood that the employer had received the completed FMLA paperwork. When the claimant asked if there anything else he needed to do, LaRue told him to check in later to find out if the employer needed anything else from him. The claimant called and talked to LaRue on December 23. They had a bad connection and could not hear one another. The claimant understood he should call later. When the claimant called on December 29, LaRue then told him the employer had not received the FMLA paperwork and he no longer had a job. The employer considered the claimant's employment to have ended on November 20 when was absent.

The claimant established a claim for benefits during the week of December 29, 2013. He filed weekly claims for the weeks ending January 4 through February 15, 2014. He received his maximum weekly benefit amount of \$385 for each week. The employer did not participate at the fact-finding interview.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees, or
3. 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 do not amount to 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 employer established business reasons for discharging the claimant. The employer ultimately discharged the claimant because he violated the employer's no-fault attendance policy by accumulating ten attendance points in a rolling calendar year. The facts establish the claimant properly notified the employer he would be absent on September 9, October 7 and November 20, 2013.

The employer would have excused the November 20 absence under FMLA. The question that must be answered is why the employer's representative initially told the claimant that the employer had received the completed FMLA paperwork and later told him that the employer had not. Even though LaRue's notes indicate she did not receive the completed FMLA paperwork and she had a difficult time contacting the claimant, the claimant's testimony is credible. The claimant's testimony must be given more weight than the employer's reliance on LaRue's notes when she did not testify at the hearing. The facts establish the claimant kept in contact with LaRue on a weekly basis and took reasonable steps to provide the employer with the completed FMLA paperwork. The evidence also shows that the employer told the claimant on December 16 that the employer had received the completed paperwork that the physician's office told the claimant had been submitted on December 2 and during the week ending December 14.

While the employer established business reasons for discharging the claimant, the claimant did not intentionally miss work. His most recent absences occurred as a result of issues with his wife's pregnancy, her health and their newborn son. The claimant did not commit work-connected misconduct. As of December 29, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's January 21, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of December 29, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs