

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES L NEWTON
Claimant

APPEAL NO. 07A-UI-04372-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

OC: 04/01/07 R: 04
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Charles L. Newton (claimant) appealed a representative's April 18, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from The Hon Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 16, 2007. The claimant participated in the hearing. Mary Watson appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two were entered into evidence. 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.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 14, 2004. He worked full time as a distribution support person in the employer's office furniture manufacturing business. His regular work schedule was 2:30 p.m. to 10:30 p.m., Monday through Friday. His last day of work was March 28, 2007. The employer discharged him on March 30, 2007. The reason asserted for the discharge was excessive absenteeism.

The claimant had received a verbal warning for four prior absences on August 28, 2006 and had received a written warning for additional absences on December 12, 2006. The December warning advised him that he would be discharged if he incurred two additional absences within the next six months. The claimant called in an absence for illness on February 27, 2007. On March 29 he called in before his shift to request a day of vacation as he wished to visit a niece who was in the hospital in Rock Island, Illinois, about 40 minutes from the employer's site in Muscatine, after she had gall bladder surgery. The claimant's supervisor advised him that he only had two hours of vacation remaining, which he allowed the claimant to take even though the claimant had not requested the time at least 24 hours in advance as required. The supervisor then understood that the claimant would come in two hours late, approximately 4:30 p.m.

The claimant left for Rock Island at approximately 10:00 a.m., getting a ride with a brother. However, the claimant was unable to get a ride back to Muscatine later that day, and so was a no-call/no-show for the remainder of his shift. As the employer considered this to be a second absence after the final warning, the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

Iowa Code § 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant's final absence was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future absences could result in termination. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's April 18, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 29, 2007. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css