

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTOINE M GREER
Claimant

APPEAL NO: 11A-UI-13130-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST PROVISIONS INC
Employer

OC: 08/28/11
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 29, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing. Sherry Bathke, the district manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant 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 December 2009. He worked as a full-time evening shift assistant cook. The employer's policy informs employees that if they have one, no-call,/no-report incident the employer discharges the employee. The claimant understood this policy. The employer's attendance policy also informs employees that if they accumulate five attendance points in a rolling six-month time, they will be discharged for excessive absenteeism.

The claimant received a verbal warning on April 6, 2011, for reporting to work two or more hours late. The claimant received an attendance point for this incident. The claimant received a total of two attendance points on July 12 and 13. As of July 14, the claimant had accumulated three attendance points. Even though the employer's policy indicates an employee receives a written warning when they accumulate three attendance points within six months, the claimant did not receive a written attendance warning until August 29.

On August 27, the claimant was scheduled to work. He did not report to work because he was ill. He was nauseas and vomiting. The claimant asked his mother to call the employer even though the employer's policy requires employees to call for themselves when unable to work. The owner did not receive a message that the claimant was unable to work on August 27.

When the claimant reported to work on August 29, the employer not only gave him a written warning, but also a one-day suspension for his August 27 absence. The employer warned the claimant it was possible he would be discharged for not calling or reporting to work on August 27. The claimant told the employer his mother had called in his absence.

On August 30, 2011, the claimant called the employer before he went to work to see if he still had a job. Bathke told him he was discharged. The employer discharged the claimant because he failed to call or report to work on August 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. 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).

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 claimant understood he would be discharged if he failed to notify the employer when he was unable to work. Since the claimant had called the employer before, even when he would be late, the claimant's testimony that he asked his mother to call the employer and that he was ill is credible. The claimant's testimony that he was sitting next to her when she placed the call is not credible because he then could have left the message instead of her. The employer's testimony that the employer did not receive a call from the claimant is also credible. The claimant did not call the employer. Since the owner, who worked on August 27 did not testify, it is not known if the employer received a call from the claimant's mother. Even though the claimant asked his mother to call the employer, it is possible she forgot and did not place the call. Ultimately, the claimant used poor judgment when he did not take a few minutes to call the employer to report he was ill and unable to work.

The employer established justifiable business reasons for discharging the claimant for failing to properly report he was ill and unable to work on August 27. Even though the employer's policy states that one no-call/no-show incident results in termination, this one incident for unemployment purposes, does not rise to the level of work-connected misconduct. As of August 28, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's September 29, 2011 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant's failure to properly notify the employer one time that he was unable to work as scheduled does not rise to the level of work-connected misconduct. As of August 28, 2011, 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/css