

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES C MC CUTCHAN
Claimant

APPEAL NO: 09A-UI-18702-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLEN MEMORIAL HOSPITAL
Employer

OC: 11/15/09
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's December 9, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on January 27, 2010. The claimant participated in the hearing. Abby Meeste, a human resource assistant, 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.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 17, 2008. The claimant worked as a full-time registered nurse. The employer's attendance policy informs employees that after six absences the employer starts its progressive discipline.

The employer started its progressive discipline with the claimant on May 12, 2009. On May 12, 2009, the claimant received his first written warning after he called in sick and had six attendance occurrences. The claimant called in sick on August 11 and received his second written warning. On October 13, the claimant again called in sick. He had a fever. The employer gave the claimant his third written warning and indicated he would be suspended one day. The employer warned the claimant that if he had another absence, he would be discharged.

On October 31, the claimant was on-call from 3:00 p.m. to 7:00 p.m. When the employer had not called him by 6:50 p.m., the claimant assumed he would not be called in to work. The claimant was not required to work after 7:00 p.m. The claimant left his home just before 7:00 p.m. Just after the claimant left, the employer called the claimant to ask if he could either come to work until another employee got to work or called to see if he could work later that

night. The claimant missed the employer's call. The employer made some calls after 7:00 p.m. and the claimant missed these calls also.

When an employee is on-call, the employer pays the employee for the hours he is on-call. In the claimant's situation, the employer paid him for working 3:00 p.m. to 7:00 p.m.

The employer considered the claimant's failure to respond to the call made before 7:00 p.m. as an unexcused absence. In accordance with the employer's policy, the employer discharged the claimant for excessive absenteeism on November 4, 2009.

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 section 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 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 claimant knew or should have known his job was in jeopardy if he had any more absences after he received the October written warning. Even though the claimant had not been suspended one day before he was terminated, the employer warned him that his job was in jeopardy if he had any more attendance issues.

On October 31, the claimant knew he was scheduled to work on-call until 7:00 p.m. The claimant assumed that if the employer had not called him by 6:50 p.m., he would not be called because the employer did not require him to work after 7:00 p.m. Unfortunately, the claimant used poor judgment when he failed to check his phone at 7:00 p.m. to verify the employer had not called him to work. The facts, however, do not establish that the claimant intentionally failed to work as scheduled. Instead, he used poor judgment when he left his home minutes before 7:00 p.m. The claimant's other attendance issues occurred when he was ill and unable to work. The claimant properly reported these absences.

While the employer established justifiable business reasons for discharging the claimant, the claimant did not commit work-connected misconduct. As of November 15, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's December 9, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons. The claimant did not, however, commit work-connected misconduct. As of November 15, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs