

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS A SORTEBERG
Claimant

APPEAL NO: 12A-UI-05148-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE WEITZ COMPANY LLC
Employer

OC: 03/25/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 24, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Cassey Sanger, the human resource manager, Karmyn Babcock and David Stember 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 August 2011. He worked as a full-time support desk specialist. The claimant's job required servicing customers who called in for assistance. At his job, the claimant had many incoming calls for service.

In accordance with the employer's policy, as long as employees had PTO hours to cover an absence, the employer was not overly concerned about an employee's attendance. The employer's attendance policy also informed employees that if they were going to be late or absent, they were to contact a supervisor. If an employee did not have PTO time to cover an absence, they would not be paid. When employees had a negative PTO balance and continued to be absent, they were subject to termination for excessive absenteeism unless they were covered under short-term disability benefits or had an excused absence.

When the claimant was absent from work, he was usually ill and unable to work. He sought medical treatment in late fall 2011. The claimant's treating physician advised the claimant to look for a less stressful job because the stress at work created stomach issues for the claimant. This in turn resulted in the claimant being absent from work. Sanger did not know the claimant had any medical issues until late February 2012, when he provided a doctor's excuse indicating he had to take a week off from work. In late February 2012, the claimant experienced a stress-induced panic attack. He initially thought he was having a stroke. After the claimant

was absent on February 29 March 1 and 2, he had a negative PTO balance. The claimant's physician again advised him to look for a less stressful job. The claimant then started looking for another job.

The claimant did not feel well and was absent on March 14, 15 and 16. On March 16, the employer notified the claimant there was a problems with his PTO balance and he had to report to work on March 19. The claimant responded by indicating he would try to be at work on March 19. On March 16, Sanger also suggested that the claimant apply for short-term disability benefits. The claimant did not feel well and did not report to work on March 19.

When the claimant was again absent on March 19, the employer sent him an email informing him that he had to report to work on March 20 and could not be absent from work until he built up enough PTO hours to cover his absences. On March 20, the claimant submitted the necessary paperwork to Hartford Insurance for short-term disability benefits.

The claimant understood on March 19 that his job was in jeopardy because of his on-going attendance issues. The employer told the claimant he was not to report to work while his short-term disability claim was processed. The claimant understood that if his short-term disability request was granted, his absences would be excused and his job was not in jeopardy. If his short-term disability request was denied, the employer would require him to report to work immediately. The claimant also applied for workers' compensation benefits.

On March 27, the claimant's request for short-term disability was denied. The employer then discharged him for excessive unexcused absenteeism. After the claimant was discharged, his worker's compensation claim was also denied.

The claimant established a claim for benefits during the week of March 25, 2012. He filed claims for two weeks, the weeks ending March 31 and April 7, 2012. He did not file any more weekly claims because he started a job with another employer that was not as stressful.

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 employer discharged the claimant for justifiable business reasons. As a result of the claimant's numerous absences for stress-related illness, he was not a dependable or reliable employee for a job that required someone to answer many service calls. The claimant notified the employer when he was ill and unable to work. If the claimant had been granted short-term disability benefits, the employer would not have ended his employment on March 27, 2012. Even though short-term disability benefits were not granted, the facts do not establish that the claimant committed work-connected misconduct. Instead, he was excessively absent because of on-going stress-related issues that he was seeking treatment for. As of March 25, 2012, the claimant is qualified to receive benefits for the weeks ending March 31 and April 7, 2012.

If the claimant becomes unemployed again, he must reopen his claim.

DECISION:

The representative's April 24, 2012 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of March 25, 2012, 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