

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH L FINERAN
Claimant

APPEAL NO: 13A-UI-06009-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMAHA STANDARD INC
Employer

OC: 12/02/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 8, 2013 determination (reference 02) 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. Tom Kuiper represented the employer. Karen Biggs, the human resource manager, testified 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 July 2011. He worked as a full-time welder. The employer's written attendance policy informs employees they are allowed to have 48 hours of unexcused absences from June 1 through May 31. The claimant received a copy of the handbook with the attendance policy when he started working.

In November 2012, the claimant grieved his termination for having too many attendance points - over 54 points. The employer agreed to give the claimant another opportunity and reinstated him as an employee. The employer told the claimant that if did not have enough earned back hours to cover future absences, he would be discharged for excessive absenteeism. The claimant understood that after his November grievance settlement, he could be discharged if he had another unexcused absence.

From January 14 through February 27, the employer assessed the claimant a total of 2.39 points for reporting to work late by a minute and for being gone from work for 2.5 hours on February 27 for taking care of a court-related matter.

On April 15, the claimant called the employer to report he was unable to work. The claimant experienced a reoccurrence of a medical issue he had before. The claimant called the employer each day he was scheduled to work through April 20. When the claimant returned to

work on April 21, he gave his supervisor a doctor's note. His supervisor told the claimant that it was too late and he escorted the claimant off the premises. The claimant believed that since he was unable to work for medical reasons, FMLA would cover and excuse these absences.

The employer ended the claimant's employment as of April 12 when he did not report to work as scheduled. When the claimant called on April 12, he did not say why he was unable to work. Since the claimant did not have enough earned back hours to cover this absence, the employer assessed him eight points for his April 12 absence. This meant he had a total of 56 attendance points and violated the employer's attendance policy for excessive absenteeism.

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 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 justifiable business reasons for discharging the claimant when he notified the employer on April 15 he was unable to work as scheduled. As a result of this absence and being unable to work until April 21, the claimant was excessively absent from work and violated the employer's attendance policy. Since the claimant was ill and unable to work these days, he did not commit work-connected misconduct. Therefore, as of April 21, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's May 8, 2013 determination (reference 02) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of April 21, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css