

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MOHAMED H MOHAMED  
1331 – 24<sup>TH</sup> ST APT 1  
DES MOINES IA 50311

ACTION WAREHOUSE CO LTD  
1701 E EUCLID  
DES MOINES IA 50313

JOHN HEMMINGER  
ATTORNEY AT LAW  
2454 SW 9<sup>TH</sup> ST  
DES OINES 50315

Appeal Number: 05A-UI-03704-DW  
OC: 03/06/05 R: 02  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Mohamed H. Mohamed (claimant) appealed a representative's April 1, 2005 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Action Warehouse Company Ltd. (employer) would not be charged for any benefits paid to the claimant because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Des Moines on April 27, 2005. The claimant appeared with his attorney, John Hemminger. No one appeared on the employer's behalf. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer on August 4, 2004. The employer assigned the claimant to work at Titan Tire. The claimant worked full time mounting tires at Titan Tire. Lester supervised the claimant at Titan Tire and Ken supervised the claimant on the employer's behalf. The claimant understood Titan Tire would discharge an employee if an employee accumulated six attendance points in a year.

While working at Titan Tire, the claimant received a written warning for attendance issues. The claimant never knew how many attendance points he received. During the week of February 28, the claimant was absent one day because he was ill and unable to work as scheduled. The claimant gave Lester a doctor's note verifying he had been ill and was unable to work as scheduled. On March 7, 2005, Lester told the claimant that Titan Tire could no longer have the claimant working because the claimant had too many attendance points. The claimant contacted Ken who indicated he would look into the matter. As of the date of the hearing, the employer has not assigned the claimant to any other job.

#### 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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

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 may have had business reasons for discharging the claimant. The facts do not, however, establish that the claimant committed a current act of work-connected misconduct. Instead, the evidence indicates the claimant's sixth attendance point occurred when he was ill and unable to work as scheduled. As of March 6, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 1, 2005 decision (reference 03) is reversed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of March 6, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs