

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREW A WHITE**  
Claimant

**APPEAL NO: 09A-UI-15472-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**A & J ENTERPRISES INC**  
Employer

**OC: 08/16/09**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's October 5, 2009 decision (reference 02) 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. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 17, 2009. The claimant did not respond to the hearing notice or participate in the hearing. Adam Schuster, the general manager, and Sandra Byrd appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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 November 17, 2008. The claimant worked part-time as a dishwasher and cook.

During his employment, the claimant called in four times, November 20, 26 and December 6 and 7, to report he was unable to work as scheduled. When employees are unable to work, the employer asks employees to call in three hours before they are scheduled to work and find their own replacement.

On November 20 and 26, the claimant called 60 to 90 minutes before his shift started to report he was ill and unable to work. On December 6, the claimant notified the employer less than an hour before his shift started to report he was unable to work because he had some teeth extracted. The employer assumed this was a scheduled dental appointment, but did ask the claimant when he knew about this dental work. On December 7, the claimant called 15 minutes before his shift started to report he would be late because his pants were still in the dryer. The employer indicated it was not a problem for the claimant to be at work by 11:15 a.m. instead of

11:00 a.m. At 12:30 p.m. the claimant's wife called and told the employer the claimant would not be at work after all because he had car problems.

The claimant had been hired as a probationary employee. Since he missed four days of work and the employer was not satisfied with some of his work, the employer discharged the claimant on December 7, 2008.

**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 employer established business reasons for discharging the claimant. During his probation, the claimant established he was not a dependable or reliable employee because he called off work three times for health-related issues. The last day, December 7, the claimant did not report to work because he had car problems. Although the employer may not have been satisfied with the claimant's work performance, unsatisfactory work performance does not rise to the level of work-connected misconduct. The facts do not establish that the claimant intentionally failed to work as scheduled or that he substantially disregarded the employer's interests. The claimant did not commit work-connected misconduct. Therefore, as of December 7, 2008, the claimant is not disqualified from receiving benefits.

**DECISION:**

The representative's October 5, 2009 decision (reference 02) is affirmed. The employer discharged the claimant for compelling business reasons. These reasons do not, however,

establish that the claimant committed work-connected misconduct. As of December 7, 2008, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for some benefits.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs