

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CODY M LANG
Claimant

APPEAL NO: 10A-UI-10607-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAC IOWA CITY LLC
Employer

OC: 06/20/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.7-2-a(2) – Charges Against Employer’s Account

STATEMENT OF THE CASE:

Cody M. Lang (claimant) appealed a representative’s July 28, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with IAC Iowa City, L.L.C. (employer). After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on September 16, 2010. The claimant participated in the hearing. Teresa Feldman 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.

ISSUES:

Was the claimant discharged for work-connected misconduct? Is the employer’s account subject to charge?

FINDINGS OF FACT:

The claimant started working for the employer on February 8, 2010. He worked full time as an injection operator on the third shift of the employer’s auto component manufacturing business. His last day of work was the shift that ended on June 18, 2010. The employer discharged him on June 21, 2010. The reason asserted for the discharge was violation of an attendance agreement.

On April 29 the claimant had signed an agreement to avoid termination at that time due to attendance in which he agreed to have perfect attendance for the next 60 days. On the shift that began on June 17 and went into June 18 he suffered a pulled groin injury at work and was sent to the employer’s occupational health care provider. He was given a light-duty work restriction with no lifting over ten pounds. His next scheduled shift was to begin the evening of June 20 into June 21. As the claimant prepared to report for work, he was suffering significant groin pain and was concerned that the injury might actually be more serious. Given the pain he did not believe he could perform even light-duty work, and he was further concerned he would make the injury worse. Therefore, he concluded not to return to work until he had again gone to

the doctor, so he called in an absence to the employer on the evening of June 20 within the proper time for reporting an absence.

On June 21 the claimant did return to a doctor at about 9:00 a.m. The doctor did not find that there was any more serious injury, and again released the claimant for work as previously permitted. However, because of this absence within the 60-day period after April 29 agreement, and because the doctor did not provide any information to confirm the claimant's concern that the injury was more severe than previously believed, the employer discharged the claimant.

The claimant established an unemployment insurance benefit year effective June 20, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to a properly reported illness or injury cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. 871 IAC 24.32(7); Cosper, supra; Gaborit v. Employment Appeal Board, 734 N.W.2d 554 (Iowa App. 2007). Verification by a doctor of the extent of the perceived illness or injury is not necessary to establish that the absence should be treated as excused; the question is more whether the claimant had a good faith belief that he was sufficiently ill or injured so as to be unable to work. Gaborit, supra. Because the final absence was related to

properly reported illness or injury which the claimant believed in good faith was sufficient to make him unable to work, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. The employer has failed to meet its burden to establish misconduct. Cosper, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began January 1, 2009 and ended December 31, 2009. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's July 28, 2010 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css