

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN C MARTINEZ
Claimant

APPEAL NO: 14A-UI-03997-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEE ZEE INC
Employer

OC: 03/09/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 9, 2014 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 at the May 6 hearing. Lacey Leichliter, a human resource assistant, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant 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 2013. The employer hired him to work as a full-time welder. During orientation, the employer gave the claimant a copy of the employer's attendance policy. The employer assesses attendance points for each scheduled hour that is not worked. The employer assesses attendance points even when a physician restricts an employee from working, unless the absence is covered under FMLA.

On February 26, 2014, the claimant received a written warning for accumulating 34 attendance points. The claimant did not agree that he had accumulated that many points and wrote on the warning that he wanted the human resource department to verify he had actually missed that much time. Since the claimant's supervisor had not correctly prorated the attendance points, he talked to the claimant again on February 28, 2014. The supervisor then explained that because the claimant had not worked a year, he had actually exceeded the number of attendance points the employer allowed him since the claimant had only worked seven months. The claimant learned on February 28 that he could not have another absence until he had worked nine months for the employer when he could accumulate 36 attendance points. The claimant understood that if he was absent again for any reason until May 2014, he would be discharged.

On March 10, the claimant's supervisor sent the claimant home early because the claimant became sick at work. The claimant told his supervisor he did not want to go home because he knew he would be discharged if he had any more attendance points. His supervisor indicated that he would talk to the human resource department about this, but the claimant had to go home.

The claimant's wife picked him up from work and took him to the emergency room. A physician restricted the claimant from working for the next three days. The claimant was told to stay in bed. The claimant notified the employer on March 11 that he was ill and unable to work. The claimant reported he had a doctor's note indicating he could not work the next three days. Since the doctor restricted the claimant from working and the claimant reported this to the employer on March 11, he did not call or report to work on March 12 or 13. The employer assessed the claimant six points for leaving work on March 10 and eight points each day on March 11, 12 and 13, or a total of 24 points for these three days.

The claimant went back to the doctor on March 13. His physician told him he had to stay home on March 14, but could return to work on March 15. The claimant called the employer on March 14 to report he was unable to work because he was still ill. The employer assessed the claimant eight points for this absence. The employer discharged the claimant on March 14 for violating the employer's attendance points because he had accumulated more attendance points than the employer allowed.

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. The claimant exceeded the number of attendance points the employer allowed for the period of time the claimant worked. In late February 2014, the claimant understood his job was in jeopardy and he could not have any absences in March or April 2014. Unfortunately, the claimant became ill and his supervisor sent him home early on March 10. A physician then restricted him from working March 11 through 14 because he was ill. The claimant properly notified the employer he was ill and unable to work March 11 through 14, 2014. The claimant did not commit work-connected misconduct. As of March 16, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's April 9, 2014 determination (reference 02) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of March 16, 2014, 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/pjs