

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADLEY A MOORE
Claimant

APPEAL NO: 08A-UI-10981-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI
Employer

**OC: 10/19/08 R: 04
Claimant: Appellant (2)**

Section 96.5-2- a- Discharge

STATEMENT OF THE CASE:

Bradley A. Moore (claimant) appealed a representative's November 17, 2008 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of TPI (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 9, 2008. The claimant participated in the hearing. J. T. Breslin, the human resource manager, appeared on the employer's behalf.

After the hearing had been closed and the parties had been excused, the employer faxed additional information and documents to the Appeals Section. This information was forwarded to the claimant. The information the employer faxed after the hearing had been closed has not been considered by the administrative law judge. Based on the evidence presented during the hearing, 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.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on May 4, 2000. The claimant worked as a full-time warehouse associate. During his employment, the claimant received a copy of the employer's attendance policy. The policy informs employees they can be discharged if they accumulate ten attendance incidents within a rolling 18-month time frame.

After the claimant's father passed away in January 2008, he has had problems dealing with his father's death. As a result, the claimant has missed some work. The claimant received a written warning on March 26, 2008, because he had four attendance incidents - February 12, 18, March 3 and 26. On May 21, the claimant received a second written warning because he had been absent from work on May 20 and 21. The claimant did not work as scheduled on June 27, August 20 and 26. The claimant should have received another written warning in late August to let him know that if he had any more attendance issues

he would be discharged. The claimant did not receive any warnings about his attendance after May 21, 2008.

In late September, the claimant and Breslin talked about the possibility of the claimant receiving family medical leave so he could have some time off to deal with the issues associated with his father's death. The claimant did not pursue applying for family medical leave. Instead, he sought help from a professional.

On October 2, the claimant notified the employer he was unable to work because he had the flu. On October 7, the claimant was late for work because his wife's vehicle broke down on the highway and he had to get the vehicle off the highway before he went to work. On October 13, the claimant notified the employer he was unable to work. October 13 was his father's birthday. The claimant had emotional problems coping this day and was unable to work on October 13.

The employer's payroll clerk does not review time records until a week after an employee submits time worked. During the week of October 20, Breslin learned the claimant had again missed work on October 13. The employer discharged the claimant on October 22 for violating the employer's attendance policy by having more than ten attendance issues in less than a year.

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. 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).

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Although the claimant received two written warnings about on-going attendance issues, he did not receive a third written warning in late August 2008. As a result, the claimant did not realize his job was in jeopardy in October. The most absences occurred after he properly reported on October 2 he was ill and unable to work and on October 13 when the claimant notified the employer he was unable to work because of emotional issues the claimant was trying to deal with concerning his father's birthday and his death in January. The facts do not establish that the claimant intentionally or substantially failed to work as scheduled. Any time the claimant was unable to work as scheduled, he notified the employer. The days the claimant did not work were days he was not capable of working because he was physically or emotionally unable to work.

The employer established justifiable business reasons for discharging the claimant. The evidence does not, however, establish that the claimant committed work-connected misconduct by intentionally failing to work as scheduled. As of October 19, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's November 17, 2008 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 19, 2008, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs