

**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**

**JULIAN ZEPEDA
200 LIVINGTON ST
DES MOINES IA 50315**

**ACTION WAREHOUSE CO LTD
1701 E EUCLID
DES MOINES IA 50313**

**Appeal Number: 05A-UI-03305-DWT
OC: 02/20/05 R: 02
Claimant: Respondent (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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Action Warehouse Company, Ltd. (employer) appealed a representative's March 16, 2005 decision (reference 01) that concluded Julia Zepeda (claimant) was qualified to receive unemployment insurance 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 April 19, 2005. The claimant responded to the hearing notice but was not available for the hearing. The claimant's witness was also called, but was also not available for the hearing. Messages were left for both people to contact the Appeals Section immediately. Neither person contacted the Appeals Section in response to the messages left. Kent Denning, the personnel director, 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.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits

FINDINGS OF FACT:

The claimant previously worked for the employer in 1997. When the employer rehired the claimant on September 9, 2004, the employer reminded the claimant he was required to work as scheduled. The employer provides employees to work at Titan Tire where the claimant worked. The claimant's Titan Tire supervisor was Jerry Williams. Even though Williams supervised the claimant, only Denning had the authority to discharge the claimant.

The employer's policy informs employees the employer will discharge employees if they accumulate six attendance points in a year. After the employer rehired the claimant, the claimant talked to Denning a number of times asking for time off from work. The claimant had a number of personal issues he needed to address.

On January 9, 2005, the claimant did not work as scheduled. The January 9 absence gave the claimant six attendance points. When the claimant reported to work on January 10, Williams told the claimant his attendance was getting out of hand. The claimant reported to work on January 11, but asked to leave early so he could take care of some personal matters. On January 13, the claimant reported to work as scheduled to work and was told to report to his supervisor. Instead of going to his supervisor's office, the claimant went to his brother's department. After waiting for his brother for 30 to 45 minutes, the claimant left the facility. The claimant did not report to work again.

The employer had not officially terminated the claimant for having six attendance points in less than year, but would have done so the following week. The employer waits to receive payroll records or timecards to verify an absence.

The claimant established a claim for unemployment insurance benefits during the week of February 20, 2005. He filed claims for the weeks ending February 26 through April 9, 2005. The claimant received a total of \$1,225.00 in benefits for these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. Even though the claimant left work on January 13, the employer would have discharged the claimant for excessive absenteeism. The evidence indicates the claimant realized he violated the employer's attendance policy and would be discharged.

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 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 evidence does not establish any justifiable reason for the claimant being absent on January 9, 2005. Therefore, without any explanation from the claimant, the evidence establishes the employer discharged the claimant for work-connected misconduct. As of February 20, 2005, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits during the weeks ending February 26 through April 9, 2005. He has been overpaid a total of \$1,225.00 in benefits.

DECISION:

The representative's March 16, 2005 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 20, 2005. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The claimant has been overpaid and must repay a total of \$1,225.00 in benefits he received for these weeks.

dlw/sc