

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Stogdill began working for Exide Technologies on September 25, 1999 and was employed full time as a dry charge operator. Approximately two weeks before September 16, 2005, Mr. Stogdill spoke with human resources concerning the fact that he had a one-week hunting trip to Canada planned for September. He was told that he did not have enough vacation time to cover the intended absences. Because he did not have enough vacation time to use, Mr. Stogdill intended to take the attendance points he would accrue while being gone. He was told he would need to call in each day of absence.

On the morning of September 16, Mr. Stogdill left a voice message for the employer indicating he would not be at work because he had injured his foot. He indicated he had a doctor's excuse through September 26. He did not leave for his hunting trip until September 18 but did not make any attempt to speak to anyone at work directly about his planned absences. He did not bring in the doctor's excuse on September 16. Mr. Stogdill, his wife, and his father drove the 15 hours to Canada in a pick-up truck. During the trip, Mr. Stogdill spent five hours during each of five days in a tree stand hunting bear. The stand is approximately 10 feet off the ground and is accessed by climbing ladder-like stairs attached to the tree. When he was not in the tree stand, Mr. Stogdill spent time fishing from a power boat. The cabin they stayed in was approximately one mile from the tree stand.

On September 26, Mr. Stogdill presented the employer with a doctor's excuse from Dr. Jeanne Camdon indicating he could return to work on September 26. Dr. Camdon is a chiropractor who practices as an associate with Mr. Stogdill's father, Dr. Jay Stogdill. Her office in Bloomfield, Iowa, is a 2.5 hour drive from where Mr. Stogdill lives in Manchester, Iowa. During the week before he went on the hunting trip, Mr. Stogdill worked exclusively as a forklift operator. According to his father, he could have performed this job during the period beginning September 16 in spite of any problems he was having with his foot. The employer believed Mr. Stogdill had given false information regarding his medical condition beginning September 16 and, therefore, discharged him on September 26, 2005.

Mr. Stogdill has received a total of \$2,388.00 in job insurance benefits since filing his claim effective September 25, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Stogdill was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Stogdill was discharged for giving false information regarding his absences beginning September 16. He had notified the employer of his intent to take the time off for the hunting trip even though he did not have available vacation time. Therefore, the issue is whether he gave false information in order to avoid the consequences of the employer's attendance policy.

The administrative law judge concludes that Mr. Stogdill's condition as of September 16 was not such that he needed to be excused from work. In spite of what he claimed was an injured foot, he was able to climb up and down the 10 feet to the tree stand on five separate occasions. His foot injury did not prevent him from walking the one mile from the cabin to the tree stand,

and back again, on those five occasions. Mr. Stogdill's father, a doctor, testified that operating a forklift would not have been contraindicated by the foot condition. Since he had operated a forklift the week before he went hunting, he could have performed that same job on and after September 16.

The administrative law judge appreciates that Mr. Stogdill had a doctor's excuse saying he could not work until September 26. However, that does not end the inquiry. The administrative law judge is not persuaded that it was merely coincidental that Mr. Stogdill was diagnosed with a foot injury that took him off work the same week he planned to go bear hunting. The only treatment he received on September 16 was from an associate in his father's practice, a practice over two hours away from his home. The level of activity engaged in by Mr. Stogdill during the trip to Canada belies the need for a medical excuse. The administrative law judge concludes that the excuse given by Dr. Camdon was based on an accommodation to a colleague rather than medical necessity.

After considering all of the evidence, the administrative law judge concludes that there was no medical reason Mr. Stogdill could not have worked the week he was in Canada. He presented false information to the employer in order to have the absences covered as medical absences rather than simply absences for personal reasons. His conduct was contrary to the standards the employer had the right to expect. For the reasons stated herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Mr. Stogdill has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated October 10, 2005, reference 01, is hereby reversed. Mr. Stogdill was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Stogdill has been overpaid \$2,388.00 in job insurance benefits.

cfc/kjw