

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM K FREEMAN**  
Claimant

**APPEAL NO: 13A-UI-11915-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEE ZEE INC**  
Employer

**OC: 09/15/13**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's October 17, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. Sara Tew, a human resource specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer in October 2011. The claimant was working as a full-time machine operator on the 1:00 p.m. to 7:00 a.m. shift. The employer's policy requires employees to notify the employer 30 minutes before a scheduled shift when an employee is unable to work as scheduled. The employer's attendance policy informs employees they will be discharged if they accumulate 48 attendance points in a year. Also, if an employee does not call or report to work for three consecutive days, the employer considers the employee to have voluntarily quit.

The claimant's supervisor knew during the shift that started the evening of September 5 the claimant did not feel well. His back bothered him. During this shift, the claimant's supervisor commented that the claimant should take some time off.

The employer required employees to work mandatory overtime on September 7. This meant the claimant was required to work on September 6 starting at 11:00 p.m. The claimant did not know there was mandatory overtime. The claimant did not report to work for the mandatory overtime on Friday evening, September 6. The claimant did not usually work a Friday, 11:00 p.m., to Saturday, 7:00 a.m., shift.

The claimant still had problems with his back on Sunday. He tried to contact the employer on a friend's phone at 10:30 p.m., but did not get through to the employer. After the claimant was home just before 11:00 p.m. he again called the employer to report he was unable to work his scheduled shift that started at 11:00 p.m. on September 8.

On September 10, the claimant talked to the employer's human resource personnel. After the claimant learned the employer did not have a record that he called to report his absence on Sunday and considered the claimant to have quit because he had not reported to work or called the employer since September 5, the claimant brought the employer information that he had called the employer. The claimant also brought the employer a doctor's statement indicating he was restricted from working September 9 through 11. After the claimant brought this information, the employer indicated they would review his file and get back to him.

The employer ended the claimant's employment on September 9. As of September 5, the claimant had already accumulated 48 attendance points and he accumulated 16 more attendance points when he did not work the mandatory overtime or his September 8, 11:00 p.m. shift.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged 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).

Based on the employer's attendance policy, the employer discharged the claimant for excessive absenteeism. Even though the employer had justifiable business reasons for discharging the claimant because the claimant had more than 48 attendance points, the claimant did not commit work-connected misconduct. His most recent absences occurred because he did not realize or know about the mandatory overtime and he tried to contact the employer 30 minutes before his scheduled shift on September 8 when he was unable work because he had back issues. The claimant established reasonable grounds for not working as scheduled September 6 through 9. The facts do not establish that the claimant intentionally failed to work, but was unable to work as scheduled. As of September 15, 2013, the claimant is qualified to receive benefits.

**DECISION:**

The representative's October 17, 2013 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons for excessive absenteeism as the employer's policy defines this term. Since the claimant attempted to timely contact the employer on Sunday, September 8, and he did not work because his back hurt and he was unable to work, and because he did not realize mandatory overtime was scheduled for everyone on September 7. The claimant did not commit work-connected misconduct. As of September 15, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css