

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARC R BLACKBURN
Claimant

APPEAL NO. 09A-UI-02419-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRECISION OF NEW HAMPTON INC
Employer

**Original Claim: 11/30/08
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Precision of New Hampton, Inc. (employer) appealed a representative's February 3, 2009 decision (reference 01) that concluded Marc R. Blackburn (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 6, 2009. At the time for the hearing, the parties agreed to submit the matter to the administrative law judge for determination based upon a stipulation of facts and submitted Claimant's Exhibits A through J and Exhibits One through Twenty-Three. Based on a review of the stipulated facts, the exhibits, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 21, 2007. He worked as a production worker in the employer's automobile transmission torque converter remanufacturing business.

The claimant suffered an injury covered under workers' compensation on October 17, 2007. He was on and off work restrictions, but beginning in early May was off work due to his doctor's restrictions. On August 25, 2008 the claimant had an appointment with the workers' compensation doctor; as a result of a contact by the employer's workers' compensation carrier's case manager on August 26 to the doctor, the doctor completed a release form on August 26. (Exhibits 12, D.) The form had the box marked indicating the claimant "may return to work with the following restrictions" with the "light duty" and the "no lifting of more than 20 pounds" boxes marked, with additional restrictions hand-written of "no twisting, bending, forward reaching"; however, to the side of the line with the "may return to work" typing, the doctor had also written, "or work excuse until." No date was specified.

The claimant was not directly told by the doctor on August 25 that he was being released to return to work. As a result, he did not return to work on August 27. The employer received the

August 26 release from the insurance case manager on August 27 (Exhibits 13, 14) and interpreted it as requiring the claimant to return to work. When the claimant did not return to work on August 27, the employer discharged the claimant for unexcused absenteeism; the claimant received the termination letter on August 28. (Exhibits A, 15.) The claimant had previously been sent warnings that his job was in jeopardy due to attendance issues. (Exhibits 3, 4, 5, 8.)

Upon receipt of the termination letter on August 28, the claimant's attorney sent the employer communication advising the employer that the claimant had not been informed he had been released to return to work. (Exhibit B.) On August 29, the employer's insurance case manager forwarded to the employer a new statement and release form dated August 28; the statement indicated, "[please] update, and disregard excuse written/sent 8/26." The release form, signed by the same doctor who had signed the August 26 form, now specified that the claimant was to be excused from work for approximately 30 days from the August 25 exam date. (Exhibits 16, 17, 18.) The employer did not reverse its termination decision, believing it justifiably relied on the August 28 release.

The doctor was subsequently asked to address the sequence of events between August 25 and August 28; by letter dated September 26, 2008, the doctor indicated that during the August 25 appointment "I did not discuss with Mr. Blackburn issues related to release or restrictions at work place, so I believe he left my office with the assumption he is excused from work." She noted that a day or two later she found a note requesting workplace restrictions, which she assumed was from the claimant, so she did write up the release form with some restrictions. She indicated that "if Marc Blackburn did not show for work it is not because of his fault. It is because of miscommunication." (Exhibit I.) The employer determined not to rescind its discharge decision.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, mere inefficiency, unsatisfactory

conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his absence from work after the employer received the August 26 release form. Excessive unexcused absences can constitute misconduct; however, in order to establish the necessary element of intent, the final incident must have occurred despite the claimant's knowledge that the occurrence could result in the loss of his job. 871 IAC 24.32(7); Cosper, supra; Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984); Gaborit v. Employment Appeal Board, 734 N.W.2d 554 (Iowa App. 2007). The employer has not established that the claimant knew and understood he had been released with some restrictions; indeed, there is no evidence the claimant was even directly provided a copy of the August 26, 2008 release form until after he was discharged. While the employer may have been acting in a good-faith reliance on the release form that was provided to it on August 27, it has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's February 3, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, at such point as he becomes otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw