

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHAN P FLANDERS
Claimant

APPEAL NO. 08A-UI-08303-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPECIALIZED WASTE HAULING LC
Employer

**OC: 07/13/08 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Specialized Waste Hauling LC (employer) appealed a representative's September 12, 2008 decision (reference 01) that concluded Jonathan P. Flanders (claimant) was qualified to receive 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 October 1, 2008. The claimant participated in the hearing. Harold Sypersma, the manager, appeared on the employer's behalf. Based on the evidence, 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 a current act of work-connected misconduct?

FINDINGS OF FACT:

The employer rehired the claimant on December 7, 2007. The claimant worked full-time as an interior truck detailer.

On January 10, the claimant overslept was and almost four hours late for work. In February, the claimant overslept on February 4, 21 and 22. The employer called the claimant on February 21 and 22 when the claimant did not call. The employer picked up the claimant these days because he did not have a ride to work. On April 24 and 25 the claimant overslept and was late for work. On April 28, the claimant did not call or report to work. The claimant did not work as scheduled on May 6, 9, 27, 29 and 30. On June 2, the claimant overslept and was again late for work. On June 26, the claimant had problems with his exhaust pipe on his vehicle. He called the employer to report he would be late for work. The claimant could not get his vehicle repaired and did not report to work. The claimant did not notify the employer that his plans had changed and he was unable to work that day.

When the claimant was late for work, the employer talked to him and warned him that he had to report to work as scheduled. The claimant understood the employer was not happy with his failure to report to work as scheduled.

On July 7, the claimant called the employer to report he had cut his hand and was unable to work. Around 11:00 a.m., the claimant personally talked to Sypersma. The claimant told Sypersma how he had cut his hand and that he had eight stitches. The claimant did not know how long he would be off work, but told Sypersma it would probably be at least a week. Sypersma told the claimant to keep him informed and that if there was work for the claimant when his doctor released him, he could return to work.

On July 11, the claimant told the employer his physician had released him to return to work on Monday, July 13. The employer had already replaced the claimant by having a part-time employee work full-time. As a result, the employer told the claimant there was no work for him to do. Later, the claimant received a letter indicating his employment ended because he had been laid off from work.

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 § 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)

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established business reasons for discharging the claimant. If the employer had discharged the claimant in April or May, the discharge may have amounted to a current act of work-connected misconduct. The facts in this case show that while the claimant had an attendance problem and the employer had repeatedly talked to him about working as scheduled, the claimant's most recent absence, July 7 through 11, occurred because a doctor restricted him from after he cut his hand that required eight stitches. While the claimant may have ultimately acted in such a way that resulted in cutting his hand, the facts do not establish that he intentionally failed to work the week of July 7. The claimant notified the employer that he was unable to work. As soon as the claimant was released, he notified the employer that he was again able to work. Since law requires a claimant to be discharged based on a **CURRENT ACT** of work-connected misconduct, the claimant is qualified to receive benefits because the employer did not establish that the claimant committed a current act of misconduct. As of July 13, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's September 12, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute a current act of work-connected misconduct. As of July 13, 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/css