

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON M RICHARDS**  
Claimant

**APPEAL NO: 06A-UI-09066-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FERGUSON ENTERPRISES INC**  
Employer

**OC: 12/25/05 R: 03**  
**Claimant: Respondent (1/R)**

Section 96.5-2- a - Discharge

**STATEMENT OF THE CASE:**

Ferguson Enterprises, Inc. (employer) appealed a representative's August 24, 2006 decision (reference 01) that concluded Jason M. Richards (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 September 25, 2006. The claimant participated in the hearing. Deborah Damage, the human resource administrator, 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 work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on May 8, 2006. The claimant worked as a full-time forklift driver. At the time of hire, the claimant received a copy of the employer's attendance policy. The employer's policy informs employees they must contact the employer prior to a scheduled shift when they are unable to work as scheduled. If an employee does not do this, the employer may consider this to be a no-call, no-show incident, which subjects the employee to discipline. The claimant understood that when he was unable to work as scheduled, the employer required him to contact the employer.

Prior to July 17, the claimant called in a number of times notifying the employer he was unable to work as scheduled. While the claimant's absenteeism was higher than normal for a new employee, the claimant had always contacted the employer when he was unable to work as scheduled.

On July 17, the claimant contacted the employer to report he was unable to work as scheduled that day because he had injured his foot over the weekend. The claimant explained that he was going to his doctor. The employer understood the claimant would report to work on Tuesday.

The claimant's doctor's excuse actually restricted the claimant from working until Thursday, July 20. The claimant thought that after his doctor saw him, he might have released him to return to work on Tuesday. The claimant's doctor did not release him to return to work early. The claimant did not call the employer on Tuesday or Wednesday to report he was unable to work as scheduled.

The claimant reported to work as scheduled on Thursday, July 20. The claimant then learned the employer had discharged him as of July 19. The employer discharged the claimant because he had not called or reported to work for two days and for his attendance prior to July 17.

#### **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 section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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 employer established compelling business reasons for discharging the claimant. Since the claimant prior to July 17 had called in every day he was unable to work, his failure to contact the employer on July 18 and 19 amounts to an error in judgment. This is understandable when his doctor restricted him from work until July 20, 2006. The claimant did not understand that the employer required him to contact the employer every day even when a doctor's excuse restricts him from working these days.

When the claimant injured his foot, the employer already had concerns about his attendance. Under the facts of this case, the claimant did not commit work-connected misconduct. Therefore, as of July 16, 2006, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

The claimant filed a claim for unemployment insurance benefits during the week ending July 22, but he was restricted from working until July 20, 2006. Therefore, an issue of whether the claimant is eligible to receive benefits for the week ending July 22 is remanded to the Claims Section.

**DECISION:**

The representative's August 24, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of July 16, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged. An issue of whether the claimant is eligible to receive benefits for the week ending July 22 is remanded to the Claims Section to investigate when the claimant was restricted from working July 16 until July 20, 2006.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs