

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS M MCCLELLAND
Claimant

APPEAL NO. 09A-UI-08793-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN WYK FREIGHT LINES INC
Employer

OC: 05/03/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 8, 2009, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on July 6, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Ron Moyer participated in the hearing on behalf of the employer with a witness, Marcy Van Wyk. Exhibit A was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a truck driver from June 19, 2006, to May 6, 2009. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer two hours before the start of their shift if they were not able to work as scheduled.

In January 2008, the operations manager, Ron Moyer, warned the claimant that his excessive absences were unacceptable. He was absent from work without notice on June 12, 2008. He was suspended from work and given a last warning on August 20, 2008, after he was absent for work without notice to the employer. He knew his job was in jeopardy due to his attendance.

The claimant was scheduled to work at 6:30 a.m. on May 4, 5, and 6. He had a reaction to anxiety medication and was not able to drive on May 4. He called the employer to report that he would not be at work at 8:20 a.m.

On May 5, the claimant was still sick. He did not call the employer that day because his girlfriend had accidentally taken his cell phone and he had no other phone at the house.

On May 6, the claimant called in at about 10:00 a.m. and told Moyer that he would not be at work. Moyer told him that he was discharged for his poor attendance and failure to properly notify the employer about his absences.

Later that day, the claimant went to a doctor and got an excuse from working on May 5 and 6.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide that excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer. 871 IAC 24.32(7).

The claimant had a long history of attendance problems including failures to properly notify his employer about absences, for which he was warned. While the claimant had a legitimate reason to miss work based on the doctor's slip, he did not properly notify the employer on May 4, 5, or 6. Based on the failure to properly notify his employer, after warnings for similar conduct, the evidence establishes the claimant was discharged for work-connected misconduct.

DECISION:

The unemployment insurance decision dated June 8, 2009, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs