

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOMINICK E SURRETTE**  
Claimant

**APPEAL NO. 12A-UI-06886-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEE ZEE INC**  
Employer

**OC: 04/22/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated June 1, 2012, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on July 5, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Sarah Lew participated in the hearing on behalf of the employer. 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 in the buffing department from December 12, 2011, to April 2, 2012. The claimant was informed and understood that the employer has an attendance policy under which an employee is assessed points for absences and tardiness.

The claimant received 2 points each on December 21, January 16, February 28, and March 20 because the employer considered him to have punched in late. He actually reported to work on time on those days; but, because of problem with the time clock, it reflected a late punch-in.

The claimant was absent from work with notice to employer on March 14. His fiancée had to work overtime that day and could not leave work until about 7 p.m., which conflicted with the claimant's work shift.

The claimant was scheduled to work on April 3. During the weeks leading up to April 3, he was experiencing pain in his right hand. On April 3, the claimant went to the hospital because of the pain in his hand. The doctor who examined the claimant excused him from work for two days.

When he notified the human resources department that he had gone to the hospital, he was told to go to the employer's occupational health clinic because the claimant asserted his medical problem was related to his work. He went to the clinic and the nurse practitioner prepared a statement releasing him to return to work that day. The claimant decided to follow the doctor's

recommendation and did not report to work that afternoon. He notified the employer that he was not going to be at work.

The next day the claimant was scheduled to work was on April 9, 2012. When he reported to work, he was discharged for excessive absenteeism.

The employer's account is not presently chargeable for benefits paid to the claimant, since it is not a base period employer on the claim.

### **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 § 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 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, 11 (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 substantial and 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).

871 IAC 24.32(7) provides:

Excessive unexcused absenteeism. 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.

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. I believe the claimant's testimony about the days the claimant was considered late. The final absence was due to legitimate medical reasons and was properly reported. I believe the claimant's testimony that he was excused from working by the emergency room doctor and that his hand pain made him unable to work that day.

The employer's account is not presently chargeable for benefits paid to the claimant, since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

**DECISION:**

The unemployment insurance decision dated June 1, 2012, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/kjw