

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM R BENTZ SR
Claimant

APPEAL NO: 10A-UI-08079-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH SERVICES WEST LLC
Employer

OC: 04/25/10
Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's May 28, 2010 decision (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment ended for nondisqualifying reasons. A telephone hearing was held on July 21, 2010. The claimant participated in the hearing with his union representative, Tom Marean. Jan Keeling and Jeff Wagner 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 claimant voluntarily quit his employer for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 25, 1999. The claimant worked as a full-time custodian at Simpson College. The employer's written work rule informs employees they can be discharged if they leave work without authorization.

After the claimant started missing work for health issues, the employer talked to him in February 2010 about applying for FMLA. The claimant did not want to take leave, but eventually claimant took the FMLA paperwork. The claimant had not returned the FMLA paperwork by April 27, 2010.

On February 17, 2010, the claimant told his supervisor he was ill and needed to leave work. Although his supervisor asked him to talk to her about this request, the claimant did not do this. He left work without her express permission to leave. On February 18, the claimant contacted the employer to report he was going to take two days of vacation. On February 24, 2010, the employer gave the claimant a three-day suspension for additional attendance issues. The claimant left work without his supervisor's permission and he took two days of vacation without requesting in advance this vacation time. The employer warned the claimant on February 24

that further attendance problems could lead to his discharge. The claimant appealed the three-day suspension without pay but was not successful.

The claimant used vacation days to seek medical treatment in March. The employer gave the claimant this time off so he could resolve his medical issues. The claimant started treatment.

On April 26, 2010, the claimant felt anxious and decided he needed a medical appointment. The claimant left a note for his supervisor informing her that he left because he did not feel well. After the claimant left work, he tried to set up an appointment, but was not successful.

The claimant reported to work at 6 a.m. on April 27, 2010. He was still anxious about work and about setting up an appointment. Before his supervisor came to work, he may have told Keeling he did not feel well and was going home. Keeling does not remember this conversation. She would have told the claimant to contact his supervisor before he left work. The claimant left work around 8:00 a.m. because he did not feel well and needed to set up an appointment. The claimant did not contact his immediate supervisor or any supervisor to receive permission to leave work early. The claimant told co-workers he was leaving, but he did not punch out.

After the claimant made an appointment in the next few days, he went back to work on April 27. Around 2:00 p.m. on April 27, the employer asked the claimant why he had left work that morning without authorization. The claimant responded that he had to see a doctor. The employer then asked for his keys after telling the claimant that the employer had given him many opportunities, but he no longer had a job.

The claimant established a claim for benefits during the week of April 25, 2010. The claimant has filed for and received benefits since April 25, 2010.

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. 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 employer realized the claimant had medical issues that he needed to address and resolve. As a result, the employer allowed the claimant to take vacation to address these issues in March. The employer even talked to the claimant about requesting FMLA. While the claimant ultimately took the FMLA paperwork, he had not yet returned the FMLA paperwork to the employer by April 27, 2010.

After the claimant received the three-day suspension in part because he had NOT received his supervisor's permission to leave work early, on April 26 he left his supervisor note explaining that he left work early. The claimant was unable to make an appointment on April 26. On April 27, although the claimant reported to work, he still needed to set up an appointment. Instead of having his wife make an appointment for him or staying at home until he could call and make and make an appointment, the claimant went to work that morning. While he may

have told Keeling he did not feel well, he did not contact a supervisor to receive authorization to leave. The claimant told some co-workers he was leaving, but he did not punch out. On April 27, the claimant left work without receiving authorization from a supervisor.

The claimant knew or should have known his job was in jeopardy because of attendance issues. The employer talked to the claimant about FMLA, but the claimant did not pursue this right away because he did not want to take leave without pay. Since the claimant had already received a written warning and suspension for leaving work without his supervisor's permission, his failure to contact his supervisor on April 27 to get permission to leave work early amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct. As of April 25, 2010, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's May 28, 2010 decision (reference 02) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 25, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs