

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM L ARENSDORF
Claimant

APPEAL NO. 08A-UI-01891-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AUTOMOTIVE ENTERPRISES COMPANY
Employer

**OC: 01/20/08 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated February 11, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on March 11, 2008. The claimant participated. Participating as a witness for the claimant was Phyllis Arensdorf. The employer participated by Steve Whalen, company president.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional disqualifying misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from April 2, 2007, until January 21, 2008, when he was discharged from employment. Mr. Arensdorf held the position of a full-time janitorial worker and was paid by the hour. The claimant was discharged when he failed to report for scheduled work after providing notification of his impending absence for Saturday, January 19, 2008. On that day, a message was received by the company indicating that the claimant could not report to work. As the company was unsure as to whether the claimant could not report to work due to hospitalization or incarceration, the claimant was requested medical documentation supporting the fact that he had been hospitalized. The claimant had been hospitalized on Friday, January 18, 2008, after he injured his hand in a non-work-related incident and had been authorized to be off work the following day because of his hand injury. The form that the claimant initially presented to the company did not provide sufficient details to be acceptable to the company. Subsequently, although the claimant attempted to supply a second doctor's statement verifying his inability to report to work due to injury, he nevertheless was discharged from employment. During the course of his employment, the claimant was repeatedly warned for repeatedly reporting to work late or leaving early.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge must conclude, based upon the evidence in the record, that the claimant's final attendance infraction occurred when the claimant was determined unable to work by a physician due to an injury that occurred the preceding day, January 18, 2008. Proper notification was provided to the employer of the claimant's impending absence for Saturday, January 19, 2008. When requested to supply additional documentation, the claimant attempted to do so. The testimony of the claimant's witness corroborates that the claimant was injured and unable to work on that day and that the claimant had provided notice to the employer.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

For the reasons stated herein, the administrative law judge must conclude that the claimant's last absence was caused in part by his inability to report to work because he had injured his hand. The evidence establishes that the claimant was informed that he could remain employed providing he provided doctor's verification of his injury. Although the claimant attempted to do so, the employer found the documentation to be insufficient. The testimony of the witnesses at the hearing established that the claimant was in fact injured and was verified by a medical practitioner as being unable to work on Saturday, January 19, 2008.

The question in this case is not whether the employer has the right to discharge the claimant for these reasons but only whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate Mr. Arensdorf was undoubtedly a

sound decision from a management viewpoint, the final act was not due to intentional disqualifying misconduct.

DECISION:

The representative's decision dated February 11, 2008, reference 01, is hereby affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw