

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYMOND J TALLMAN
Claimant

APPEAL NO. 07A-UI-09116-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MATRIX METALS LLC
Employer

**OC: 08/26/07 R: 04
Claimant: Respondent (1-R)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 24, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 9, 2007. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Linda Leffler participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a production worker for the employer from July 8, 2004, from August 21, 2007. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to progressive discipline for excessive absenteeism. After receiving a final warning, employees are subject to discharge if they have two absences within three months. The claimant received a final warning for attendance on June 5, 2007.

The claimant was sick on August 10 and called in properly to report his absence. On August 15, the claimant left work early due to illness and notified the employer before leaving. He called in sick on August 16 and 17. Under the employer's policy, consecutive days of absence were treated as one occurrence. The claimant returned to work on August 20 and 21, but was discharged on August 21 for excessive absenteeism.

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.

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.

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. No willful and substantial misconduct has been proven in this case.

The employer testified that the claimant had been recalled back to work after a union grievance but could not return to work because he failed a drug test. The claimant did not work after August 21, 2007. The decision in this case was based on his separation on August 21, 2007. The claimant's failure to return to work after reinstatement would not constitute a discharge or voluntarily quit employment. The only possible disqualifying provision of the law would be the provision that disqualifies an individual who fails to accept suitable work without good cause. This, however, was not an issue listed on the hearing notice and cannot be decided in this case. This issue is remanded to the Agency to investigate and make a determination.

DECISION:

The unemployment insurance decision dated September 24, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The issue of whether the claimant failed to accept an offer of suitable work without good cause is remanded to the Agency to invest and make a determination.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw