

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT T BROWN
Claimant

APPEAL NO: 14A-UI-01157-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

POLK COUNTY
Employer

OC: 12/29/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 22, 2014 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the February 20 hearing with his representative, Jim Hamilton. Laura Stuart, the claimant's mother, testified on his behalf. Michael Campbell, John Rowen and Joe Simon appeared on the employer's behalf. During the hearing, Employer Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in January 2011. He worked as a full-time building technician.

On December 4, 2013, the claimant received a three-day suspension and a "Last Chance Warning Letter for issues that occurred on November 27. One of the issues involved the claimant's attendance. The December warning informed the claimant that any further violations of any Department Work Rules or County Policies in the next 24 months would result in his termination. (Employer Exhibit Two.)

The claimant did not report to work as scheduled on December 20, 2013. He could not report to work because he had been arrested and incarcerated the evening of December 19. The employer's policy informs employees they are to report absences to their immediate supervisor a minimum one hour prior to the scheduled shift. Absences reported by anyone other than the employee shall not be recognized as approved leave. If an employee wants to use a personal or vacation day, the employee must talk to his immediate supervisor for approval. (Employer Exhibit Three.)

The claimant's mother contacted and talked to his supervisor on December 20. She told the supervisor the claimant was incarcerated and asked if he could use a vacation day to cover his December 20 absence. The supervisor indicated he would put the request in the book and see what he could do. The claimant's mother understood the claimant could use his vacation hours to cover this December 20 absence. The claimant was still incarcerated on December 26 and 27. On December 26, the claimant's mother again called and left messages for his supervisor to call her, but no one did. The claimant did not personally call or report to work on December 20, 26 or 27.

On December 27, the employer ended the claimant's employment because he violated the December 4 last chance agreement by failing to personally notify the employer he was unable to work on December 20 and 26. (Employer Exhibit One.) On December 27, the employer had a deputy go to the jail and give the claimant his termination letter informing him he was discharged. The claimant bonded out of jail on January 3, 2014.

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 § 96.5(2)a.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

On December 4 when the claimant received a three-suspension, in part for attendance issues, and the "Last Chance Warning Letter", he knew or should have known his job was in jeopardy. The employer's policy clearly states absences reported by other than the employee shall not be recognized as approved leave. (Employer Exhibit Three.) Even though the claimant's mother understood the claimant's December 20 absences had been approved as vacation, the claimant again should have known this request would not be approved under the Last Chance Warning Letter unless he personally contacted his supervisor. The claimant did not have sufficient paid time to cover his absences (Employer Exhibit One). The claimant's job was already in jeopardy for attendance issues when he was incarcerated. As a result of the December 4 Last Chance Warning Letter, the claimant's unexcused absences on December 20 and 26 amount to work-connected misconduct for unemployment insurance purposes. The claimant is not qualified to receive benefits.

DECISION:

The representative's January 22, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that amount to work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 29, 2013. 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 is not subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs