

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACOB J MCINTIRE**  
Claimant

**APPEAL NO. 07A-UI-03308-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**INTERNATIONAL PIPE MACH CORP**  
Employer

**OC: 03/04/07 R: 02**  
**Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated March 26, 2007, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on April 17, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Terese Smiley participated in the hearing on behalf of the employer. Exhibits One through Three were 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 as a machine operator from February 1, 2006, to March 5, 2007. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer within two hours of the start of their shift if they were not able to work as scheduled. The claimant's work shift was from 6:00 a.m. to 2:30 p.m., Monday through Friday. He was warned about excessive absences on July 25, September 26, and October 24, 2006. He received a final written warning for excessive absences on January 8, 2007, after he called in sick on January 5, 2007.

On March 1, the claimant was sick with a bronchial infection. He did not call to notify the employer about his illness until 8:30 a.m. because both he and his children were sick the night before and he overslept as a result of fatigue. The claimant went to the doctor on March 1 and the doctor excused the claimant from working March 1 and 2. On March 2, the power went out in the town of Boone. As a result, the claimant's alarm did not go off and he overslept until 9:20 a.m. He immediately called when he woke up and reported his illness.

When the claimant reported to work on March 5, 2007, the employer discharged the claimant for excessive absenteeism. The claimant submitted his doctor's excuse when he reported to work.

## 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 (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).

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. The claimant's final absences were due to legitimate medical reasons. The claimant notified the employer about his absences but called in late each day. The claimant, however, has established justification for his failure to call in within two hours of the start of his shift.

**DECISION:**

The unemployment insurance decision dated March 26, 2007, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs