

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT A ACKERMAN
Claimant

APPEAL NO. 07A-UI-11394-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD'S INC
Employer

**OC: 11/18/07 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 11, 2007, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on December 28, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a sales associate in shoe department from June 1, 2006, to November 12, 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. The claimant had received past warnings for attendance and knew that his job was in jeopardy due to his absenteeism.

On November 13, 2007, the claimant was scheduled to work at 9:45 a.m. When he went out to his car to go to work, he discovered that his car had been broken into and vandalized. The car was not drivable and he had to report the break-in to the police. The claimant called in before the start of his shift to report what had happened and to explain that he would be late for work. He was about an hour late for work. The employer discharged the claimant 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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

While the employer may have been justified in discharging the claimant, no current act of work-connected misconduct as defined by the unemployment insurance law has been established. The final incident was an emergency beyond the claimant's control.

DECISION:

The unemployment insurance decision dated December 11, 2007, reference 01, is reversed.
The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw