

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DION J KINTZ
Claimant

APPEAL NO: 14A-UI-10364-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OZARK AUTOMOTIVE DISTRIBUTORS INC
Employer

OC: 09/07/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's September 25, 2014 (reference 01) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because he had been discharged for non-disqualifying reasons. The claimant participated at the November 6 hearing. Whitney Smith-Macintosh, the human resources supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is 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 August 2013. He worked part time, 28 hours a week, as an outbound material handler. As a part-time employee, the claimant did not receive any sick leave. When he called in sick, he received an attendance occurrence. The employer's progressive disciplinary policy is as follows:

Verbal warning – for two occurrences within six months.

Written warning – an additional two occurrences within six months of verbal warning.

Final warning – an additional two occurrence within six months of written warning.

Termination – an additional two occurrences within 12 months of final warning.

The claimant received his final warning on April 7, 2014. The majority of the claimant's absences occurred because he has migraines and cannot work when he has a migraine. The claimant understood his job was in jeopardy after he received the April final warning. The claimant called in sick on August 4, 5, and 6. He received one attendance occurrence for these days he had the flu. The claimant overslept on September 2 and was an hour late for work. On September 8 and 9 the claimant had a migraine headache and notified the employer he was unable to work. The employer discharged him on September 10 for excessive absenteeism as defined by the employer's attendance policy.

The claimant established a claim for benefits during the week of September 7, 2014. He filed claims for the weeks ending September 13 through October 18 and the week ending November 1. He received his maximum weekly benefit amount of \$132 for each of these weeks. The employer participated at the fact-finding interview.

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 presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer established justifiable business reasons for discharging the claimant when he was excessively absent as defined by the employer's attendance policy. The claimant did not commit work-connected misconduct because he properly reported his absences and was ill and unable to work the majority of the time he was absent. As of September 7, 2014 the claimant is qualified to receive benefits.

DECISION:

The representative's September 25, 2014 (reference 01) determination is affirmed. The employer discharged the claimant for business reasons, but the claimant did not intentionally fail to work as scheduled. Instead, the majority of the time he was absent the claimant was medically unable to work and he properly reported his absence. The claimant did not commit work-connected misconduct. As of September 7, 2014 the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can