

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

NICKOLAS C BROWN
3627 SW 8TH ST
DES MOINES IA 50315

ACTION WAREHOUSE CO LTD
1701 E EUCLID
DES MOINES IA 50313

Appeal Number: 05A-UI-03304-DWT
OC: 02/20/05 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Action Warehouse Company, Ltd. (employer) appealed a representative's March 15, 2005 decision (reference 01) that concluded Nickolas C. Brown (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 19, 2005. The claimant participated in the hearing. Tonya Medina, a human resource representative, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer March 11, 2004. The employer contracts employees to Titan Tire, which is where the claimant worked as a supervisor. At Titan Tire Lester Brewer was the claimant's supervisor. The claimant understood employees were required to contact the employer 30 minutes before a scheduled shift when they were unable to work. The claimant also understood an employee would be considered to have voluntarily quit if the employee failed to report to work or notify the employer he was unable to work for three consecutive days.

On May 18, 2004, the claimant was unable to work and tried to call Titan, but Titan's line was constantly busy and the claimant was unable to leave a message that he was unable to work as scheduled. The employer gave the claimant a verbal warning on May 26, 2004 for a no-call, no-show on May 18, 2004.

On October 4, the claimant was ill. He left a message on Titan's answering machine informing Titan he was ill and unable to work as scheduled. The claimant went to a doctor on October 4 and received a doctor's statement indicating he was unable to work on October 5 and 6. The claimant left a message on October 5 and 6 indicating he was still unable to work as scheduled.

The claimant reported to work on October 7 and discovered his time card had been removed. Some supervisors told the claimant they thought he had been discharged. The claimant went home and called the employer later that morning to find out about the status of his employment. When the claimant called, he learned he had been discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1-a. The claimant did not intend to quit his employment. The facts reveal the employer discharged the claimant as of October 7, 2004.

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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(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).

Based on the information the employer received from the claimant's supervisor, the employer established compelling business reasons for discharging the claimant. The claimant's testimony, however, is credible and must be given more weight than the employer's reliance on hearsay information. Therefore, a preponderance of the evidence establishes the claimant properly notified his supervisor he was unable to work as scheduled on October 4, 5 and 6 because he was ill. The law specifically excludes inability to work due to illness as a disqualifying reason that prevents a claimant from receiving unemployment insurance benefits. The evidence does not establish that the claimant intentionally failed to work as scheduled. Therefore, as of February 20, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 15, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 20, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs