

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RICHARD D SHEPERD
Claimant

APPEAL NO. 14A-UI-10924-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OZARK AUTOMOTIVE DISTRIBUTORS INC
Employer

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

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 9, 2014, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 7, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Whitney Smith-Macintosh participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a counter material handler from March 13, 2007, to September 2, 2014. He 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 and could be discharged for attendance after progressive discipline. The claimant had received a final written warning for attendance on January 20, 2014. He was three minutes late on August 13 and two minutes late on August 28, 2014. He received a verbal warning for taking an excessive break on August 25.

The claimant had intermittent Family and Medical Leave Act (FMLA) leave for his daughter's serious medical condition. He was delayed in getting to work on September 2 because his daughter required care that morning before she could go to the babysitter. The claimant called to inform the employer that he was going to be late, but no one answered the phone. He got to work as soon as possible but was 10 minutes late. Later, his supervisor informed him that he had not punched in but did not ask him about being late. At the end of the shift, the claimant's supervisor informed him that he was discharged for being late for work. The claimant explained that he was late due to his daughter's medical conditions and had intermittent FMLA, but the supervisor said it was too late and nothing could be done.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "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." 871 IAC 24.32(7).

The unemployment insurance rules provide: "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." 871 IAC 24.32(8).

The final incident that triggered the claimant's discharge was being late for work on September 2. This was not for misconduct because it was due to his daughter's medical condition for which he had intermittent FMLA. He attempted to notify the employer, but no one answered the phone. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated October 9, 2014, reference 03, is affirmed. 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/pjs