

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDWARD E HAYES
Claimant

APPEAL NO. 09A-UI-08211-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

SAPP BROS TRUCK STOPS INC
Employer

OC: 04/12/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Edward Hayes filed a timely appeal from a representative's decision dated May 29, 2009, reference 01, which denied benefits based upon his separation from Sapp Bros Truck Stops, Inc. After due notice, a hearing was scheduled for and held in Council Bluffs, Iowa on June 25, 2009. Mr. Hayes participated personally. Participating as a witness for the claimant was Ms. Carol Hayes, claimant's mother. Although duly notified, the employer did not respond to the hearing notice and did not participate in the hearing. Claimant's exhibits 1 and 2 were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant was employed as a part-time cook for Sapp Bros Truck Stops, Inc., from November 2008 until April 20, 2009, when he was discharged from employment.

The claimant was discharged on April 20, 2009, by Meloney (last name unknown), a new manager, after the claimant had been unable to report for scheduled work due to illness and a medical emergency. Mr. Hayes had been hospitalized after suffering a seizure. The employer had been notified of the claimant's impending absence and the reason for it. Claimant was absent two additional days due to complications associated with treatment for his seizure. The employer was notified the claimant would not be able to return to work and had authorized his absence. The absence had been authorized by Katie (last name unknown), an assistant manager.

Prior to being discharged, the claimant had received only one verbal warning with respect to attendance. That warning had been given approximately four months before the claimant's

discharge from employment. Although Mr. Hayes offered to provide medical documentation supporting his need to be absent for medical reasons, he was nonetheless discharged by the new manager.

REASONING AND CONCLUSIONS OF LAW:

The issue before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits. It does not.

The employer has the burden of proof in this matter. See Iowa Code section 96.62. Misconduct must be substantial in order to justify denial of unemployment insurance benefits. Misconduct that may serious enough to warrant a discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiency in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in this case establishes that the claimant was discharged after he was unable to report for scheduled work for three days due to a verifiable medical condition. The evidence in the record establishes that Mr. Hayes insured that the employer was notified in advance of his impending absences and the claimant believed that he had authorization from the employer to be absent based upon his medical condition and the notice that he had provided. Although the claimant offered to provide medical documentation to his employer at the time of discharge, he was nevertheless terminated from employment.

The Iowa Supreme Court, in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984), held that excessive, unexcused absenteeism is one form of misconduct. The Court further held however, that absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer.

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.

For the reasons stated herein, the administrative law judge concludes that the employer has not sustained its burden of proof in showing intentional disqualifying misconduct on the part of the claimant. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

Representative's decision dated May 29, 2009, reference 01, is reversed. Claimant was dismissed under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

srs/pjs