

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY A THACKER
Claimant

APPEAL NO: 10A-UI-15270-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

OC: 08/22/10
Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's October 25, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. John O'Fallon, a representative with Barnett Associates, represented the employer and Patty Maltese testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concluded the claimant is not 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 January 2007. The claimant knew and understood the employer's written attendance policy. The employer had several discussions with claimant about his on-going attendance issues. In late June 2010, the employer talked to the claimant and explained the consequence if he continued missing work. As a result of this meeting, the claimant understood he could be discharged if he had an absence in the next six or seven months.

In early August 2010, the claimant asked the employer if he could have some time off to go to California to audition for American Idol. The claimant does not remember the employer denying this request for time off. Instead, he understood the employer would look into this request and get back to him.

On August 10, 11, and 12, the claimant was ill and unable to work. When the claimant returned to work on August 13 he did not ask the employer about taking time off to go to California. Instead, the claimant assumed that since he had been ill and unable to work three days that week, the employer was going to discharge him. As a result of this conclusion, the claimant decided to go to California to audition for American Idol. The claimant was in California

August 16 through 23. On August 25, the employer discharged the claimant for going to California when he knew his job was in jeopardy for attendance issues.

The claimant established a claim for benefits during the week of August 22, 2010. He has filed claims and received benefits since August 22, 2010.

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).

Based on the warnings the employer gave the claimant about his attendance, since late June the claimant knew or should have known his job was in jeopardy. The claimant assumed that after he was sick three days in August, the employer would discharge him for on-going attendance issues. As a result of assumption, the claimant decided to go to California even though the employer had not granted him this time off. The claimant's decision to go to California for personal reasons when he knew his job was in jeopardy constitutes a substantial and intentional disregard of the standard of behavior the employer has right to expect from an employee. The employer discharged the claimant for work-connected misconduct. As of August 2, 2010, the claimant is not qualified to receive benefits.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

If the claimant had not gone to California and the employer discharged him for missing three days of work in August when he was ill, the outcome of this decision may have been different.

DECISION:

The representative's October 25, 2010 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 22, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css