

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL T CRANSTON
Claimant

APPEAL NO. 11A-UI-15676-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE AMERICAN BOTTLING COMPANY
Employer

**OC: 11/06/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Michael T. Cranston filed a timely appeal from an unemployment insurance decision dated December 2, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held with Mr. Cranston participating on his own behalf. Human Resources Manager Julie Montgomery participated for the employer, The American Bottling Company. Employer Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Michael T. Cranston was employed by The American Bottling Company from May 26, 2009 until he was discharged November 9, 2011. He last worked as a maintenance mechanic. He was discharged because of attendance violations. He was absent on October 31 and November 9, 2011 because of car problems. He had also been absent on eight other occasions in 2011. Each of those absences was due to a medical condition. These absences were reported to the employer.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does not.

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.

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to medical conditions are not held against an employee for unemployment insurance purposes as long as the absences were properly reported to the employer. See Higgins and 871 IAC 24.32(7). The evidence in the record establishes that all but two of the absences leading to discharge were due to medical conditions and that they were properly reported to the employer. Under the circumstances, the administrative law judge concludes that the evidence does not establish excessive unexcused absenteeism. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated December 2, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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