

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAMEAN C MC INTYRE
Claimant

APPEAL NO: 14A-UI-03834-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN MORRELL & CO
Employer

OC: 03/02/14
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.3(7) – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed a representative's April 2, 2014 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because he had been discharged for nondisqualifying reasons. The claimant did not participate at the April 30 hearing. Kathy Peterson, the human resource manager, participated on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUES:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

Has the claimant been overpaid any benefits?

Is the claimant or the employer responsible for paying back any overpayment?

FINDINGS OF FACT:

The claimant started working for the employer in August 2013. The employer hired him to work full time as a laborer/material handler. When the employer hired him, the claimant received information about the employer's attendance policy. The employer informed the claimant that employees would be discharged if they accumulated 12 attendance points in a rolling calendar year.

On January 15, 2014, the claimant received notice that he had accumulated eight attendance points. On February 15, the claimant received notice he had accumulated 10.5 attendance points. The notices reminded the claimant that if he accumulated 12 points, he would be discharged. The claimant called in sick on February 26. He received one point for this absence.

The employer has a procedure that allows employees to request a personal leave. If an employee obtains a personal leave, the absence does add a point to the attendance record. On

March 4, 2014, the claimant notified the employer that he would be absent for personal reasons. The employer understood the claimant had to complete some paperwork. As a result of this absence, the claimant accumulated 12.5 attendance points in less than a year. Five of the claimant's attendance points occurred because he was ill and unable to work. On March 5, the employer discharged the claimant for violating the employer's attendance policy.

The claimant established a claim for benefit during the week of March 2, 2014. The employer participated at the fact-finding interview. The claimant filed a claim for the week ending March 29, 2014. He received his maximum weekly benefit amount of \$193.00 for this week.

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),

The claimant knew his job was in jeopardy when he received a warning on February 15, 2014, that he had accumulated 10.5 attendance points. After his February 25 absence, he had 11.5 points. The employer has a personal leave the claimant could have requested for personal business. If the claimant had requested a personal leave for March 4, he would not have accumulated any attendance points and would not have been discharged on March 5, 2014. Five of the claimant's attendance points occurred because he was ill and unable to work, but he accumulated an additional 7.5 points that occurred for other reasons. When the claimant did not arrange for personal leave on March 4, he violated the employer's attendance policy. Since the claimant did not participate at the hearing, he did not establish a reasonable explanation for taking off time on March 4. Based on the facts in this case, the claimant committed work-connected misconduct. He is disqualified from receiving benefits as of March 2, 2014.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)a, b.

Based on the decision in this case, the claimant is not qualified to receive benefits as of March 2, 2014. As a result, he has been overpaid \$193.00 in benefits he received for the week ending March 29, 2014. Since the employer participated at the fact-finding interview, the claimant is responsible for paying back the overpayment of benefits.

DECISION:

The representative's April 2, 2014 determination (reference 02) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. As of March 2, 2014, the claimant is disqualified from receiving unemployment insurance benefits. 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 claimant has been overpaid \$193.00 in benefits he received for the week ending March 29, 2014. The claimant is responsible for paying back this amount to the Department.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css