

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL J WENGER
Claimant

APPEAL NO. 08A-UI-03922-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING INC
Employer

**OC: 03/23/08 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 16, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 7, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Shelby Grau participated in the hearing on behalf of the employer with witnesses, Rebecca Schwertseger and Jason Tylee. Exhibits One through Five were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a sales representative from July 11, 2005, to March 19, 2008. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. The claimant had received warning about excessive absenteeism on October 26, 2007 (verbal), November 7, 2007 (written), and December 7, 2007 (30-day probation). On January 24, 2008, the claimant was again placed on a 30-day attendance probation and given a final warning. He was informed that further infractions could result in his termination.

The claimant was sick and unable to work on March 5 and March 10 and 11. He called in properly to report his absences. On March 18, the claimant was four hours late for work.

On March 20, 2008, the claimant called in and stated that his dog had had surgery the previous day and the veterinarian had instructed the claimant that his dog had to be monitored on March 20 to make sure that the dog did not rip out his stitches. The claimant had attempted to find a place he could board his dog for the day or find someone to watch the dog, but he was unsuccessful. When he spoke to his supervisor, he said it was okay to stay home.

Before the claimant was to report to work on March 21, 2008, he was informed that he was discharged for excessive absenteeism.

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.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

No current act of work-connected misconduct has been proven in this case. His absences on March 5, 10, and 11 were due to properly reported illness. His final absence was an emergency situation as he could not leave his dog alone. He made reasonable attempts to find someone to watch the dog. It obviously would have been inhumane to have left the dog alone under the

circumstances. The lateness was unexplained but the claimant was not discharged for this tardy.

DECISION:

The unemployment insurance decision dated April 16, 2008, reference 01, 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/css