

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

NTEKOLO D MAMBULU
1305 SUNSET ST #11
IOWA CITY IA 52246

HCM INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 04A-UI-11661-DWT
OC: 09/26/04 R: 03
Claimant: Appellant (5)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge or Suspension

STATEMENT OF THE CASE:

Ntekolo D. Mambulu (claimant) appealed a representative's October 26, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of HCM, Inc. (employer) would not be charged because he had voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 23, 2004. The claimant participated in the hearing. Kim Houser, the administrator, and David Haywood, the food service supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 25, 2003. He worked as a full-time cook. The claimant understood the employer required employees to notify the employer when the employee was unable to work as scheduled. The employer's policy informs employees they can be discharged if they do not contact the employer when they are unable to work as scheduled.

On May 14, 2004, the employer talked to the claimant about his failure to notify the employer when he had been unable to work as scheduled. The employer warned him that if he had another no-call/no-show incident the employer would follow its progressive discipline and could discharge the claimant. On August 2, the employer again warned the claimant he could be discharged if he again failed to notify the employer when he was unable to work. The claimant did not call or report to work on August 1.

The claimant worked as scheduled on September 24, 2004. He was scheduled to work on September 25 from 11:00 a.m. to 7:30 p.m. The claimant left for Chicago after he finished work on September 24 because his son was ill. The claimant did not contact the employer to let anyone know he had to go to Chicago. The claimant did not report to work on Steeper 25 or 26. He did not contact the employer either day.

When the claimant returned to Iowa City on Monday, September 27, he heard the message Haywood left for him on Sunday. Haywood's message informed him that he was suspended until the employer contacted him. Haywood called the claimant on Sunday, September 26, after Haywood had been called into work for the claimant. While the claimant may have picked up his check on September 30, he did not talk to Haywood or anyone else in management.

The claimant did not contact the employer and the claimant did not receive any message from the employer to come back to work. When the claimant did not contact the employer any time after September 30, the employer concluded he had voluntarily quit his employment. Prior to the claimant's suspension, the claimant had requested a week of vacation during the week of October 3, 2004.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The evidence indicates the employer suspended the claimant on September 26, 2004.

The employer has the burden to prove the claimant was discharged or suspended 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 or suspension is not at issue in an unemployment insurance case. An employer may be justified in discharging or suspending an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits

disqualifying misconduct to 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known his job was in jeopardy if he again failed to contact the employer when he was unable to work as scheduled. The findings of fact reflect the employer's dates as to when the claimant was not at work because the employer's testimony was based in part on business records that the employer could review when witnesses testified.

Whether the claimant failed to notify the employer one or two days to report he was unable to work as scheduled is not important because the claimant admitted he failed to contact the employer at least one day to inform the employer he was unable to work as scheduled. Since the employer had already warned the claimant his job was in jeopardy for this type of behavior, the claimant's failure to again notify the employer he was unable to work as scheduled amounts to an intentional and substantial disregard of the employer's interests. It was the claimant's responsibility to have the employer's phone number with him when he went to Chicago to be with his son. The employer suspended the claimant for reasons constituting work-connected misconduct. The employer's failure to contact the claimant any time after the suspension is the equivalent of discharging the claimant.

DECISION:

The representative's October 26, 2004 decision (reference 01) is modified, but the modification has no legal consequence. The claimant did not voluntarily quit his employment. Instead, the employer suspended and then discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of September 26, 2004. 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.

dlw/kjf