

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM MUECKE
Claimant

APPEAL NO. 11A-UI-11109-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

VTI ARCHITECTURAL PRODUCTS INC
Employer

OC:07/24/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated August 18, 2011, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 14, 2011. The claimant participated. The employer participated by Mary Clark, human resources administrator. The record consists of the testimony of Mary Clark; the testimony of Adam Muecke; Claimant's Exhibit A; and Employer's Exhibits 1 through 4.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures architectural doors at its facility located in Holstein, Iowa. The claimant was hired on June 28, 2010, as a full time production worker. He was assigned to the "finish" area. The claimant's last day of work was July 28, 2011. The claimant was terminated on July 29, 2011, for violation of the employer's attendance policy.

The incident that led to the claimant's termination occurred on July 29, 2011. The claimant called in prior to the start of his shift to report that he would be absent due to illness. The employer considered this to be an unexcused absence and assessed the claimant three points under its attendance policy. The employer's attendance policy called for termination upon the accumulation of 21 points. The claimant reached 21 points as a result of his absence on July 29, 2011.

REASONING AND CONCLUSIONS OF 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The concept includes tardiness and leaving early. Absence due to matters of personal responsibility, such transportation problems and oversleeping, is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). In order to justify disqualification, the evidence must establish that the final incident leading to the decision of discharge was a current act of misconduct See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

If an employee is discharged by an employer for violation of the employer's attendance policy, this does not necessarily mean that the claimant is disqualified from receiving unemployment insurance benefits. The employer must show that final absence was unexcused as that term is defined in Iowa unemployment insurance law. Iowa law states that absence due to personal illness is excused if the employee properly notifies the employer. In this case, the claimant's final absence was due to personal illness and he properly notified the employer of his absence. His absence was therefore excused and he was not discharged for a current act of misconduct. The employer may have had good business reasons for terminating the claimant's employment. He clearly had excessive absences. However, unless his final absence was also unexcused, he cannot be disqualified from receiving unemployment insurance benefits. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's decision dated August 18, 2011, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw