

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENT L FULLHART
Claimant

APPEAL NO: 11A-UI-07684-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KOLOR GRAPHICS LC
Employer

OC: 10/24/10
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 6, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing with his witness, Marlow Morgan. Brian Ahlstrom, the vice president, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in February 2008. He worked as a full-time second shift screen manager.

In October 2010, the claimant developed a rash on his feet and lower legs. The claimant went to a doctor twice for the rash. The claimant missed some work because the rash made it difficult for him to work. The claimant concluded the rash was caused by a chemical the employer used at work.

The employer's attendance policy informs employees if they do not call or report to work as scheduled, they can be discharged. On January 13, 2011, the claimant left work early without his supervisor's permission. The employer considered this incident equivalent to a no-call, no show incident and gave him a written warning. Based on the number of absences the claimant had accumulated as of mid-April 2011, the employer gave him a final written warning for attendance issues on April 21. The warning informed the claimant that if he had any further unexcused absences, he could be discharged.

The claimant called in sick on May 2. On May 12, the claimant was scheduled to work but did not call or report to work. The claimant wanted to make a point by staying home so the employer would use a chemical at work that did not cause skin rashes. Since the claimant had

already received a warning and a final written warning for attendance issues, on May 13 the employer discharged the claimant for failing to call or report to work on May 12. The claimant was not ill and could have worked on May 12.

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. 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 when he received a final written warning for attendance issues on April 21. Even though the claimant was frustrated with the rash he had and wanted the employer to use another chemical that would not cause skin rashes, his attempt to do this by not calling in or reporting to work on May 12 when his job was in jeopardy for attendance issues makes no sense. The claimant's decision to stay home when he could have worked, in addition to failing to notify the employer he would not be at work amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The claimant committed work-connected misconduct on May 12. As of May 15, 2011, the claimant is not qualified to receive benefits.

DECISION:

The representative's June 6, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 15, 2011. 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs