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

STEVE M RAIMO
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CEDAR FALLS IA 50613

BLACKHAWK ENGINEERING INC
PO BOX 429
CEDAR FALLS IA 50613

Appeal Number: 05A-UI-11121-DWT
OC: 10/02/05 R: 03
Claimant: Appellant (2)

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 is 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

STATEMENT OF THE CASE:

Steve M. Raimo (claimant) appealed a representative's October 19, 2005 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Blackhawk Engineering, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 14, 2005. The claimant participated in the hearing. LaNae Nielsen, the human resource coordinator, and Clark Masteller 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 employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 25, 2005. The claimant worked as a full-time machine operator. The employer's attendance policy informs employees they will be discharged if they accrue five unexcused absences or have three days they do not report to work or contact the employer within a calendar year. The attendance policy also states that three tardies equal one unexcused absence.

During the claimant's employment, he did not work as scheduled on March 14, April 29, and May 10, 2005. Pursuant to the employer's attendance policy, these three days amounted to one unexcused absence. On June 1, the claimant did not work as scheduled but notified the employer he was unable to work. The employer considered this an unexcused absence.

On June 17, 2005, the claimant went on a medical leave of absence for a non-work related condition. While the claimant was off work, the employer implemented a new policy requiring employees to submit to a drug test before they could return to work when they had been on a medical leave. On August 26, 2005, the claimant informed the employer his doctor had released him to return to work on August 30, 2005. The employer then informed the claimant he had to have a drug test and the employer had to receive the results of the drug test before he could return to work. Although the employer asked the claimant to get his drug test completed that day, the claimant was unable to do so. The claimant does not have a vehicle and there was no one to take him to the hospital for the test.

On August 29, the employer learned the claimant had not taken the test. The employer left a message for the claimant reminding him to get his drug test taken. On August 30, the employer left another message for the claimant to get his drug test taken. The employer's August 30 message also informed the claimant that if he went to get the drug test that day, he would not exceed the employer's attendance guidelines. The claimant did not go to the hospital to take the drug test until Wednesday afternoon (August 31). The claimant then went to Waterloo with his girlfriend. The claimant assumed the employer would not receive the results of the drug test in time for him to work on September 1. The claimant worked the 3:00 to 11:00 pm. shift.

The morning of September 1, the employer received the results of the claimant's drug test. The results were negative so the employer left a message on the claimant's phone for the claimant to report to work as scheduled on September 1. The claimant did not get back home until 7:30 p.m. or later that day. After the claimant listened to his messages, he contacted the employer around 7:45 p.m. to find out if he needed to report to work.

On September 2, the employer discharged the claimant for violating the employer's attendance policy because he had five unexcused absences and/or had three days that he did not call or report to work. The employer concluded the claimant had not called or reported to work on August 30, 31 and September 1. Since the claimant's doctor released him to return to work as of August 30, the employer expected the claimant to report to work so the employer could have gotten him to the hospital for the drug test that day. On September 1, the claimant called after the four-hour time frame employees had to notify the employer of an absence. As a result, the employer considered this as a no-call/no-show on September 1. At a minimum the employer considered the claimant's September 1 absence as unexcused.

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 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 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 asserted he did not violate the employer's attendance policy because he went to the hospital on August 31 and submitted a sample for the drug test. If he had physically gone to work, the employer would have sent him to the hospital, which the claimant did on his own. The claimant does not believe the employer should have considered August 31 as a no-call/no-show day or as an unexcused absence. The claimant did not, however, notify the employer on August 31 that he had taken the drug test. On September 1, the claimant asserted the employer should have counted him tardy because he called the employer even though it was after the allowed four-hour time frame.

The facts establish the claimant and employer had some communication problems and the claimant made some incorrect assumptions. Even though the employer expected the claimant to report to work on August 30, the employer told the claimant on August 26 he could not report to work until the employer received the results of a drug test the employer required the claimant to take before he was allowed to work even though his doctor released him to work as of August 30.

The claimant should have made arrangements to get his drug test done on August 29 or 30 but did not. It was not until he received a message on August 30 reminding the claimant about the employer's attendance policy that the claimant took the test on August 31. The claimant then incorrectly assumed the employer would not receive the results in time for him to report to work on September 1. While the claimant should have contacted the employer prior to the start of his shift on September 1, he did not. The claimant's failure to report to work on September 1 amounts to an error in judgment but the claimant did not intentionally or substantially fail to work as scheduled.

Pursuant to its attendance policy, the employer established business reasons for discharging the claimant. The claimant is qualified to receive benefits because he did not commit work-connected misconduct.

DECISION:

The representative's October 19, 2005 decision (reference 02) is reversed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of October 2, 2005, the clamant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/tjc