

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PETER O OMOYA
Claimant

KRU LTD/FEED ENERGY COMPANY
Employer

APPEAL NO. 12A-UI-08063-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/27/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated June 26, 2012, reference 01, that held the claimant was not discharged for misconduct on May 18, 2012, and benefits are allowed. A hearing was held on July 30, 2012. The claimant participated. Amanda Blackman, HR Specialist, John Rullestad, Lead Operator, and Bryan Hanson, Plant Superintendent, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant began employment on July 16, 2003 and last worked as a full-time general production operator on May 18, 2012. The claimant received the employer attendance and work performance policy/work rules that provides for discipline.

The claimant received a disciplinary and three-day suspension on April 2 for an incident on March 27, 2012. He failed to follow an instruction not to unload vegetable oil without a bill of lading. He previously had received verbal warning(s) about attendance issues.

Claimant has been taking college classes off and on for five years. He resumed taking classes in February of this year and understood he was to work with his supervisor about his work and class schedule.

He had a series of attendance issues involving leaving work early (April 17, 24 29), missing a scheduled meeting (April 26), and failing to clock in (April 12). Claimant believes he had supervisor permission to leave work early and miss the meeting. Claimant denies any work performance issue on May 1 or May 14. On May 15 two employer workers reported claimant

loafing in the break room when he was supposed to be at work. The employer discharged claimant on May 18 for work performance and attendance issues.

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(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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge concludes that the employer failed to establish a current act of misconduct in the discharge of the claimant on May 18, 2012, for excessive "unexcused" absences and/or poor work performance.

The employer issued a written warning with a three-day suspension to claimant on April 2, 2012. Although it contends it had ongoing attendance issues with him in April thereafter, he was not given any written warning he was failing to get permission to adjust his work schedule. Since April 29 is the last attendance issue, the employer did not rely on a current act of this nature to discharge him.

The final work performance issue is based on two employer workers reporting claimant was loafing in the break room on May 15. Claimant denies this conduct and the employer did not offer the workers as witnesses or written statements from them. No current act is established on this basis for the May 14 work tank matter.

DECISION:

The decision of the representative dated June 26, 2012, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct in connection with employment on May 18, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs