

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAKE KRULL
Claimant

APPEAL NO. 07A-UI-09882-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA MOLD TOOLING CO INC
Employer

OC: 07-01-07 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 19, 2007, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 7, 2007. The claimant participated in the hearing. Dana Wensel, Human Resources Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time worker in the paint department for Iowa Mold Tooling Company from August 14, 2006 to September 26, 2007. The employer uses a no-fault, point-based attendance policy. Employees receive two points for each incident of tardiness and three points for each absence due to illness or unexcused absence. Termination occurs at 12 points. The claimant was absent due to illness and received written warnings April 11 and July 24, 2007, and was absent due to car problems and received written warnings September 10 and September 25, 2007. The employer terminated his employment September 26, 2007, for violating its attendance policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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). The employer cited four dates the claimant was absent from April 11 to September 25, 2007. Two of those absences were due to properly reported illness and the last two were related to car problems. Although issues of personal responsibility such as transportation are not considered excused absences, the claimant had four documented absences in six months, as testified to by the employer; and while that may have violated the employer's attendance policy, it does not constitute excessive unexcused absenteeism as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The October 19, 2007, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw